United Nations

Report of the International Court of Justice

1 August 1997–31 July 1998

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Note

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I. COMPOSITION OF THE COURT

1. The present composition of the Court is as follows: President: Stephen M. Schwebel; Vice-President: Christopher G. Weeramantry; Judges: Shigeru Oda, Mohammed Bedjaoui, Gilbert Guillaume, Raymond Ranjeva, Géza Herczegh, Shi Jiuyong, Carl-August Fleischhauer, Abdul G. Koroma, Vladlen S. Vereshchetin, Rosalyn Higgins, Gonzalo Parra-Aranguren, Pieter H. Kooijmans and Francisco Rezek.

2. The Registrar of the Court is Mr. Eduardo Valencia-Ospina. The Deputy-Registrar is Mr. Jean-Jacques Arnaldez.

3. In accordance with Article 29 of the Statute, the Court forms annually a Chamber of Summary Procedure. On 25 February 1998 this Chamber was constituted as follows:

Members

President, S. M. Schwebel

Vice-President, C. G. Weeramantry

Judges, G. Herczegh, Shi Jiuyong and A. G. Koroma

Substitute Members

Judges R. Higgins and G. Parra-Aranguren

4. The Court's Chamber for Environmental Matters, which was instituted in 1993 and whose mandate in its present composition was extended until the next triennial elections for the Court, is composed as follows:

President, S. M. Schwebel

Vice-President C. G. Weeramantry

Judges, M. Bedjaoui, R. Ranjeva, G. Herczegh, C. A. Fleischhauer, F. Rezek

5. In the case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Qatar had chosen Mr. José María Ruda and Bahrain Mr. Nicolas Valticos to sit as judges ad hoc. Following Mr. Ruda's death, Qatar chose Mr. Santiago Torres Bernárdez to sit as judge ad hoc. Mr. Valticos resigned as of the end of the jurisdiction and admissibility phase of the proceedings. Bahrain subsequently chose Mr. Mohamed Shahabuddeen to sit as judge ad hoc. After the resignation of Mr. Shahabuddeen, Bahrain chose Mr. Yves L. Fortier to sit as judge ad hoc.

6. In the cases concerning Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom) and (Libyan Arab Jamahiriya v. United States of America), Libya chose Mr. Ahmed Sadek El-Kosheri to sit as judge ad hoc. In the former of the two cases, in which Judge Higgins excused herself, the United Kingdom chose Sir Robert Jennings to sit as judge ad hoc.

7. In the case concerning Oil Platforms (Islamic Republic of Iran v. United States of America), Iran chose Mr. François Rigaux to sit as judge ad hoc.

8. In the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Bosnia and Herzegovina chose Mr. Elihu Lauterpacht and Yugoslavia Mr. Milenko Kreća to sit as judges ad hoc.

9. In the case concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Slovakia chose Mr. Krzysztof J. Skubiszewski to sit as judge ad hoc.

10. In the case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Cameroon chose Mr. Kéba Mbaye and Nigeria Mr. Bola A. Ajibola to sit as judges ad hoc.

11. In the case concerning Fisheries Jurisdiction (Spain v. Canada), Spain chose Mr. Santiago Torres Bernárdez and Canada Mr. Marc Lalonde to sit as judges ad hoc.

II. JURISDICTION OF THE COURT

A. Jurisdiction of the Court in contentious cases

12. On 31 July 1998, the 185 States Members of the United Nations, together with Nauru and Switzerland, were parties to the Statute of the Court.

13. Sixty States have now made declarations (many with reservations) recognizing as compulsory the jurisdiction of the Court, as contemplated by Article 36, paragraphs 2 and 5, of the Statute. They are: Australia, Austria, Barbados, Belgium, Botswana, Bulgaria, Cambodia, Cameroon, Canada, Colombia, Costa Rica, Cyprus, the Democratic Republic of Congo, Denmark, Dominican Republic, Egypt, Estonia, Finland, Gambia, Georgia, Greece, Guinea-Bissau, Haiti, Honduras, Hungary, India, Japan, Kenya, Liberia, Liechtenstein, Luxembourg, Madagascar, Malawi, Malta, Mauritius, Mexico, Nauru, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Paraguay, the Philippines, Poland, Portugal, Senegal, Somalia, Spain, Sudan, Surinaine, Swaziland, Sweden, Switzerland, Togo, Uganda, United Kingdom of Great Britain and Northern Ireland and Uruguay. The declaration of Nigeria was amended during the 12 months under review, by letter of 29 April 1998. The texts of the declarations filed by the above States will appear in Chapter IV, Section II, of the I.C.J. Yearbook 1997-1998.

14. Lists of treaties and conventions which provide for the jurisdiction of the Court will appear in Chapter IV, Section III, of the I.C.J. Yearbook 1997-1998. There are currently in force approximately 100 such multilateral conventions and approximately 160 such bilateral conventions. In addition, the jurisdiction of the Court extends to treaties or conventions in force providing for reference to the Permanent Court of International Justice (Statute, Art. 37).

B. Jurisdiction of the Court in advisory proceedings

15. In addition to the United Nations (General Assembly, Security Council, Economic and Social Council, Trusteeship Council, Interim Committee of the General Assembly), the following organizations are at present authorized to request advisory opinions of the Court on legal questions arising within the scope of their activities:

International Labour Organisation;

Food and Agriculture Organization of the United Nations;

United Nations Educational, Scientific and Cultural Organization;

International Civil Aviation Organization;

World Health Organization;

World Bank;

International Finance Corporation;

International Development Association;

International Monetary Fund;

International Telecommunication Union;

World Meteorological Organization;

International Maritime Organization;

World Intellectual Property Organization;

International Fund for Agricultural Development;

United Nations Industrial Development Organization;

International Atomic Energy Agency.

16. The international instruments which make provision for the advisory jurisdiction of the Court will be listed in Chapter IV, Section I, of the I.C.J. Yearbook 1997-1998.

III. JUDICIAL WORK OF THE COURT

17. During the period under review ten contentious cases were pending (see, however, the remarks made on "cases within cases" in the response of the Court to General Assembly resolution 52/161, (last paragraph of page 1), which is annexed to this Report.) The Court held 23 public sittings and a great number of private meetings. It delivered a Judgment on the merits in the case concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia) and three Judgments on Preliminary Objections, in the cases concerning Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom) and Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America), and Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria).

18. It also made an Order on a request for the indication of provisional measures in the case concerning the Vienna Convention on Consular Relations (Paraguay v. United States of America) and two Orders concerning Counter-Claims, in the cases concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia) and Oil Platforms (Islamic Republic of Iran v. United States of America). The Court further made Orders fixing time-limits in the cases concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom), Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America), Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria) and Kasikili/Sedudu Island (Botswana/Namibia).

19. The President of the Court made an Order extending time-limits in the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia). The Vice-President of the Court, Acting President, made Orders fixing or extending time-limits in the cases concerning Oil Platforms (Islamic Republic of Iran v. United States of America) and the Vienna Convention on Consular Relations (Paraguay v. United States of America).

1. Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)

20. On 8 July 1991, the Government of the State of Qatar filed in the Registry of the Court an Application instituting proceedings against the Government of the State of Bahrain

> "in respect of certain existing disputes between them relating to sovereignty over the Hawar islands, sovereign rights over the shoals of Dibal and Qit'at Jaradah, and the delimitation of the maritime areas of the two States"

21. Qatar claimed that its sovereignty over the Hawar islands was well founded on the basis of customary international law and applicable local practices and customs. It had therefore continuously opposed a decision announced by the British Government in 1939, during the time of the British presence in Bahrain and Qatar (which came to an end in 1971), that the islands belonged to Bahrain. This decision was, in the view of Qatar, invalid, beyond the power of the British in relation to the two States, and not binding on Qatar.

22. With regard to the shoals of Dibal and Qit'at Jaradah, a further decision of the British Government in 1947 to delimit the sea-bed boundary between Bahrain and Qatar purported to recognize that Bahrain had "sovereign rights" in the areas of those shoals. In that decision the view was expressed that the shoals should not be considered to be islands having territorial waters. Qatar had claimed and continued to claim that such sovereign rights as existed over the shoals belonged

to Qatar; it also considered however that these were shoals and not islands. Bahrain claimed in 1964 that Dibal and Qit'at Jaradah were islands possessing territorial waters, and belonged to Bahrain, a claim rejected by Qatar.

23. With regard to the delimitation of the maritime areas of the two States, in the letter informing the Rulers of Qatar and Bahrain of the 1947 decision it was stated that the British Government considered that the line divided "in accordance with equitable principles" the sea-bed between Qatar and Bahrain, and that it was a median line based generally on the configuration of the coastline of the Bahrain main island and the peninsula of Qatar. The letter further specified two exceptions. One concerned the status of the shoals; the other that of the Hawar islands.

24. Qatar stated that it did not oppose that part of the delimitation line which the British Government stated was based on the configuration of the coastlines of the two States and was determined in accordance with equitable principles. It had been rejecting and still rejected the claim made in 1964 by Bahrain (which had refused to accept the above-mentioned delimitation by the British Government) of a new line delimiting the sea-bed boundary of the two States. Qatar based its claims with respect to delimitation on customary international law and applicable local practices and customs.

25. The State of Qatar therefore requested the Court:

"I. To adjudge and declare in accordance with international law

(A) that the State of Qatar has sovereignty over the Hawar islands; and

(B) that the State of Qatar has sovereign rights over Dibal and Qit'at Jaradah shoals; and

II. With due regard to the line dividing the sea-bed of the two States as described in the British decision of 23 December 1947, to draw in accordance with international law a single maritime boundary between the maritime areas of sea-bed, subsoil and superjacent waters appertaining respectively to the State of Qatar and the State of Bahrain."

26. In the Application, Qatar founded the jurisdiction of the Court upon certain agreements between the Parties stated to have been concluded in December 1987 and December 1990, the subject and scope of the commitment to jurisdiction being determined, according to Qatar, by a formula proposed by Bahrain to Qatar on 26 October 1988 and accepted by Qatar in December 1990.

27. By letters addressed to the Registrar of the Court on 14 July 1991 and 18 August 1991, Bahrain contested the basis of jurisdiction invoked by Qatar.

28. At a meeting held on 2 October 1991 to enable the President of the Court to ascertain their views, the Parties reached agreement as to the desirability of the proceedings being initially devoted to the questions of the Court's jurisdiction to entertain the dispute and the admissibility of the Application. The President accordingly made, on 11 October 1991, an Order (I.C.J. Reports 1991, p. 50) deciding that the written proceedings should first be addressed to those questions; in the same Order he fixed the following time-limits in accordance with a further agreement reached between the Parties at the meeting of 2 October: 10 February 1992 for the Memorial of Qatar, and 11 June 1992 for the Counter-Memorial of Bahrain. The Memorial and Counter-Memorial were filed within the prescribed time-limits.

29. By an Order of 26 June 1992 (I.C.J. Reports 1992, p. 237), the Court, having ascertained the views of the Parties, directed that a Reply by the Applicant and a Rejoinder by the Respondent be filed on the questions of jurisdiction and admissibility. It fixed 28 September 1992 as the

time-limit for the Reply of Qatar and 29 December 1992 for the Rejoinder of Bahrain. Both the Reply and the Rejoinder were filed within the prescribed time-limits.

30. Qatar chose Mr. José María Ruda and Bahrain Mr. Nicolas Valticos to sit as judges ad hoc. Following Mr. Ruda's death, Qatar chose Mr. Santiago Torres Bernárdez to sit as judge ad hoc.

31. Oral proceedings were held from 28 February to 11 March 1994. In the course of eight public sittings, the Court heard statements on behalf of Qatar and Bahrain.

32. At a public sitting held on 1 July 1994, the Court delivered a Judgment (I.C.J. Reports 1994, p. 112) by which it found that the exchanges of letters between the King of Saudi Arabia and the Amir of Qatar dated 19 and 21 December 1987, and between the King of Saudi Arabia and the Amir of Bahrain dated 19 and 26 December 1987, and the document headed "Minutes" and signed at Doha on 25 December 1990 by the Ministers for Foreign Affairs of Bahrain, Qatar and Saudi Arabia, were international agreements creating rights and obligations for the Parties; and that, by the terms of those agreements, the Parties had undertaken to submit to the Court the whole of the dispute between them, as circumscribed by the Bahraini formula. Having noted that it had before it only an Application from Qatar setting out that State's specific claims in connection with that formula, the Court decided to afford the Parties the opportunity to submit to it the whole of the dispute. It fixed 30 November 1994 as the time-limit within which the Parties were jointly or separately to take action to that end and reserved any other matters for subsequent decision.

33. Judge Shahabuddeen appended a declaration to the Judgment (I.C.J. Reports 1994, p. 129); Vice-President Schwebel and Judge ad hoc Valticos appended separate opinions (ibid., pp. 130 and 132); and Judge Oda appended his dissenting opinion (ibid., p. 133).

34. On 30 November 1994, the date fixed in the Judgment of 1 July, the Court received from the Agent of Qatar a letter transmitting an "Act to comply with paragraphs (3) and (4) of the operative paragraph 41 of the Judgment of the Court dated 1 July 1994". On the same day, the Court received a communication from the Agent of Bahrain, transmitting the text of a document entitled "Report of the State of Bahrain to the International Court of Justice on the Attempt by the Parties to Implement the Court's Judgment of 1st July, 1994".

35. In view of those communications, the Court resumed dealing with the case.

36. At a public sitting held on 15 February 1995, the Court delivered a Judgment on jurisdiction and admissibility (I.C.J. Reports 1995, p. 6) by which it found that it had jurisdiction to adjudicate upon the dispute submitted to it between the State of Qatar and the State of Bahrain and that the Application of the State of Qatar as formulated on 30 November 1994 was admissible.

37. Vice-President Schwebel, Judges Oda, Shahabuddeen and Koroma, and Judge ad hoc Valticos appended dissenting opinions to the Judgment (I.C.J. Reports 1995, pp. 27, 40, 51, 67 and 74).

38. Judge ad hoc Valticos resigned as of the end of the jurisdiction and admissibility phase of the proceedings.

39. By an Order of 28 April 1995, (I.C.J. Reports 1995, p. 83), the Court, having ascertained the views of Qatar and having given Bahrain an opportunity of stating its views, fixed 29 February 1996 as the time-limit for the filing by each of the Parties of a Memorial on the merits. On the request of Bahrain, and after the views of Qatar had been ascertained, the Court, by an Order of 1 February 1996 (I.C.J. Reports 1996, p. 6), extended that time-limit to 30 September 1996. The two Memorials were filed within the thus extended time-limit.

40. By an Order of 30 October 1996 (I.C.J. Reports 1996, p. 800), the President of the Court, taking into account the views of the Parties, fixed 31 December 1997 as the time-limit for the filing by each of the Parties of a Counter-Memorial on the merits.

41. As Judge ad hoc Valticos had resigned, Bahrain chose Mr. Mohamed Shahabuddeen to sit as judge ad hoc. After Judge ad hoc Shahabuddeen had, in his turn, resigned, Bahrain chose Mr. Yves L. Fortier to sit as judge ad hoc.

42. By a letter dated 25 September 1997 Bahrain informed the Court that it challenged the authenticity of 81 documents produced by Qatar as annexes to its Memorial, and submitted detailed analyses in support of its challenge. Stating that the matter was "distinct and severable from the merits", Bahrain announced that it would disregard the content of these documents for the purposes of preparing its Counter-Memorial.

43. By a letter of 8 October 1997, Qatar stated that in its view the objections raised by Bahrain were linked to the merits, but that the Court could not "expect Qatar, at the present stage of preparation of its own Counter-Memorial, to comment on the detailed Bahraini allegations".

44. After Bahrain, in a subsequent letter, had stated that the use by Qatar of the challenged documents gave rise to "procedural difficulties that strike at the fundamentals of the orderly development of the case" and that a new development, relevant to assessment of the authenticity of the documents concerned had taken place, the President of the Court held, on 25 November 1997, a meeting with the Parties at which it was agreed inter alia that the Counter-Memorials would not deal with the question of the authenticity of the documents produced by Qatar and that other pleadings would be submitted by the Parties at a later date.

45. The Counter-Memorials of the Parties were duly filed and exchanged on 23 December 1997.

46. On 17 March 1998 the President held a further meeting to ascertain the views of the parties on the subsequent procedure. Qatar suggested the prescription by the Court of the filing of a Reply by each of the Parties at the end of March 1999, in which case it would be able to annex to its Reply a comprehensive report on the question of the authenticity of the documents; it moreover proposed to submit to the Court, by the end of September 1998, an interim report on that question to which Bahrain would be able to respond in its Reply. Bahrain did not object to the procedure envisaged by Qatar as either unreasonable or unjust.

47. By an Order of 30 March 1998, the Court then fixed 30 September 1998 as the time-limit for the filing of an interim report by Qatar and directed the filing of a Reply by each of the Parties within the time-limit of 30 March 1999.

2, 3. Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)

and

Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America)

48. On 3 March 1992 the Government of the Socialist People's Libyan Arab Jamahiriya filed in the Registry of the Court two separate Applications instituting proceedings against the Government of the United Kingdom of Great Britain and Northern Ireland and against the United States of America in respect of a dispute over the interpretation and application of the Montreal Convention of 23 September 1971, a dispute arising from acts resulting in the aerial incident that occurred over Lockerbie, Scotland, on 21 December 1988.

49. In the Applications, Libya referred to the charging and indictment of two Libyan nationals by the Lord Advocate of Scotland and by a Grand Jury of the United States respectively, for having caused a bomb to be placed aboard the Pan-American flight 103. The bomb subsequently exploded, causing the aeroplane to crash, as a consequence of which 270 persons were killed.

50. Libya contended that the acts alleged constituted an offence within the meaning of Article 1 of the Montreal Convention, which it claimed to be the only appropriate convention in force between the Parties, and claimed that it had fully complied with its own obligations under that instrument, Article 5 of which required a State to establish its own jurisdiction over alleged offenders present in its territory in the event of their non-extradition; there was no extradition treaty between Libya and the respective other Parties, and Libya was obliged under Article 7 of the Convention to submit the case to its competent authorities for the purpose of prosecution.

51. Libya contended that the United Kingdom and the United States were in breach of the Montreal Convention through rejection of its efforts to resolve the matter within the framework of international law, including the Convention itself, in that they were placing pressure upon Libya to surrender the two Libyan nationals for trial.

52. According to the Applications, it had not been possible to settle by negotiation the disputes that had thus arisen, neither had the Parties been able to agree upon the organization of arbitration to hear the matter. The Libyan Arab Jamahiriya therefore submitted the disputes to the Court on the basis of Article 14, paragraph 1, of the Montreal Convention.

53. Libya requested the Court to adjudge and declare as follows:

(a) that Libya has fully complied with all of its obligations under the Montreal Convention;

(b) that the United Kingdom and the United States respectively have breached, and are continuing to breach, their legal obligations to Libya under Articles 5 (2), 5 (3), 7, 8 (2) and 11 of the Montreal Convention; and

(c) that the United Kingdom and the United States respectively are under a legal obligation immediately to cease and desist from such breaches and from the use of any and all force or threats against Libya, including the threat of force against Libya, and from all violations of the sovereignty, territorial integrity, and the political independence of Libya.

54. Later the same day, Libya made two separate requests to the Court to indicate forthwith the following provisional measures:

(a) to enjoin the United Kingdom and the United States respectively from taking any action against Libya calculated to coerce or compel Libya to surrender the accused individuals to any jurisdiction outside of Libya; and

(b) to ensure that no steps are taken that would prejudice in any way the rights of Libya with respect to the legal proceedings that are the subject of Libya's Applications.

55. In those requests Libya also requested the President, pending the meeting of the Court, to exercise the power conferred on him by Article 74, paragraph 4, of the Rules of Court, to call upon the Parties to act in such a way as to enable any Order the Court might make on Libya's request for provisional measures to have its appropriate effects.

56. By a letter of 6 March 1992, the Legal Adviser of the United States Department of State, referring to the specific request made by Libya under Article 74, paragraph 4, of the Rules of Court, in its request for the indication of provisional measures, stated inter alia that

"taking into account both the absence of any concrete showing of urgency relating to the request and developments in the ongoing action by the Security Council and the Secretary-General in this matter ... the action requested by Libya ... is unnecessary and could be misconstrued".

57. Libya chose Mr. Ahmed S. El-Kosheri to sit as judge ad hoc in both cases.

58. At the opening of the hearings on the request for the indication of provisional measures on 26 March 1992, the Vice-President of the Court, exercising the functions of the presidency in the case, referred to the request made by Libya under Article 74, paragraph 4, of the Rules of Court and stated that, after the most careful consideration of all the circumstances then known to him, he had come to the conclusion that it would not be appropriate for him to exercise the discretionary power conferred on the President by that provision. At five public sittings held on 26, 27 and 28 March 1992, both Parties in each of the two cases presented oral arguments on the request for the indication of provisional measures.

59. At a public sitting held on 14 April 1992, the Court read the two Orders on the requests for indication of provisional measures filed by Libya (I.C.J. Reports 1992, pp. 3 and 114), in which it found that the circumstances of the case were not such as to require the exercise of its power to indicate such measures.

60. Acting President Oda (ibid., pp. 17 and 129) and Judge Ni (ibid., pp. 20 and 132) each appended a declaration to the Orders of the Court; Judges Evensen, Tarassov, Guillaume and Aguilar Mawdsley appended a joint declaration (ibid., pp. 24 and 136). Judges Lachs (ibid., pp. 26 and 138) and Shahabuddeen (ibid., pp. 28 and 140) appended separate opinions; and Judges Bedjaoui (ibid., pp. 33 and 143), Weeramantry (ibid., pp. 50 and 160), Ranjeva (ibid., pp. 72 and 182), Ajibola (ibid., pp. 78 and 183) and Judge ad hoc El-Kosheri (ibid., pp. 94 and 199) appended dissenting opinions to the Orders.

61. By Orders of 19 June 1992 (I.C.J. Reports 1992, pp. 231 and 234), the Court, taking into account that the length of time-limits had been agreed by the Parties at a meeting held on 5 June 1992 with the Vice-President of the Court, exercising the function of the presidency in the two cases, fixed 20 December 1993 as the time-limit for the filing of the Memorials of Libya and 20 June 1995 for the filing of the Counter-Memorials of the United Kingdom and the United States of America. The Memorials were filed within the prescribed time-limit.

62. On 16 and on 20 June 1995 respectively the United Kingdom and the United States of America filed preliminary objections to the jurisdiction of the Court to entertain the Applications of the Libyan Arab Jamahiriya.

63. By virtue of Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits are suspended when preliminary objections are filed; proceedings have then to be organized for the consideration of those preliminary objections in accordance with the provision of that Article.

64. After a meeting had been held, on 9 September 1995, between the President of the Court and the Agents of the Parties to ascertain the latters' views, the Court, by Orders of 22 September 1995 (I.C.J. Reports 1995, p. 282 and 285), fixed, in each case, 22 December 1995 as the time-limit within which the Libyan Arab Jamahiriya might present a written statement of its observations and submissions on the preliminary objections raised by the United Kingdom and the United States of America respectively. Libya filed such statements within the prescribed time-limits.

65. The Secretary-General of the International Civil Aviation Organization, which had, in accordance with Article 34, paragraph 3, of the Statute, been informed that the interpretation of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aircraft, concluded in Montreal on 23 September 1971, was in issue in the two cases, and been communicated copies of the written proceedings, informed the Court that the Organization had "no observation to make

for the time being", requesting, however, to be kept informed of the developments of the two cases, in order to determine whether it would be appropriate to submit observations at a later stage.

66. Public sittings to hear the oral arguments of the Parties on the preliminary objections raised by the United Kingdom and the United States of America were held from 13 to 22 October 1997.

67. At public sittings held on 27 February 1998, the Court delivered its Judgments on the preliminary objections.

68. In the case of Libya v. the United Kingdom the operative paragraph of the Judgment reads as follows:

"For these reasons:

THE COURT,

(1) (a) by thirteen votes to three, rejects the objection to jurisdiction raised by the United Kingdom on the basis of the alleged absence of a dispute between the Parties concerning the interpretation or application of the Montreal Convention of 23 September 1971;

IN FAVOUR: Vice-President Weeramantry, Acting President; Judges Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc El-Kosheri;

AGAINST: President Schwebel; Judge Oda; Judge ad hoc Sir Robert Jennings;

(b) by thirteen votes to three, finds that it has jurisdiction, on the basis of Article 14, paragraph 1, of the Montreal Convention of 23 September 1971, to hear the disputes between Libya and the United Kingdom as to the interpretation or application of the provisions of that Convention;

IN FAVOUR: Vice-President Weeramantry, Acting President; Judges Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc El-Kosheri;

AGAINST: President Schwebel; Judge Oda; Judge ad hoc Sir Robert Jennings;

(2) (a) by twelve votes to four, rejects the objection to admissibility derived by the United Kingdom from Security Council resolutions 748 (1992) and 883 (1993);

IN FAVOUR: Vice-President Weeramantry, Acting President; Judges Bedjaoui, Guillaume, Ranjeva, Shi, Fleischhauer, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc El-Kosheri;

AGAINST: President Schwebel; Judges Oda, Herczegh; Judge ad hoc Sir Robert Jennings;

(b) by twelve votes to four, finds that the Application filed by Libya on 3 March 1992 is admissible.

IN FAVOUR: Vice-President Weeramantry, Acting President; Judges Bedjaoui, Guillaume, Ranjeva, Shi, Fleischhauer, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc El-Kosheri:

AGAINST: President Schwebel; Judges Oda, Herczegh; Judge ad hoc Sir Robert Jennings;

(3) by ten votes to six, declares that the objection raised by the United Kingdom according to which Security Council resolutions 748 (1992) and 883 (1993) have rendered the claims of Libya without object does not, in the circumstances of the case, have an exclusively preliminary character.

IN FAVOUR: Vice-President Weeramantry, Acting President; Judges Bedjaoui, Ranjeva, Shi, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc El-Kosheri;

AGAINST: President Schwebel; Judges Oda, Guillaume, Herczegh, Fleischhauer; Judge ad hoc Sir Robert Jennings."

Joint declarations were appended to the Judgment by Judges Bedjaoui, Guillaume and Ranjeva; by Judges Bedjaoui, Ranjeva and Koroma; and by Judges Guillaume and Fleischhauer; Judge Herczegh also appended a declaration to the Judgment of the Court. Judges Kooijmans and Rezek appended separate opinions to the Judgment. President Schwebel, Judge Oda and Judge ad hoc Sir Robert Jennings appended dissenting opinions.

69. In the case of Libya v. the United States, the operative paragraph reads as follows:

"For these reasons:

THE COURT,

(1) (a) by thirteen votes to two, rejects the objection to jurisdiction raised by the United States on the basis of the alleged absence of a dispute between the Parties concerning the interpretation or application of the Montreal Convention of 23 September 1971;

IN FAVOUR: Vice-President Weeramantry, Acting President; Judges Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc El-Kosheri;

AGAINST: President Schwebel; Judge Oda;

(b) by thirteen votes to two, finds that it has jurisdiction, on the basis of Article 14, paragraph 1, of the Montreal Convention of 23 September 1971, to hear the disputes between Libya and the United States as to the interpretation or application of the provisions of that Convention;

IN FAVOUR: Vice-President Weeramantry, Acting President; Judges Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc El-Kosheri;

AGAINST: President Schwebel; Judge Oda;

(2) (a) by twelve votes to three, rejects the objection to admissibility derived by the United States from Security Council resolutions 748 (1992) and 883 (1993);

IN FAVOUR: Vice-President Weeramantry, Acting President; Judges Bedjaoui, Guillaume, Ranjeva, Shi, Fleischhauer, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc El-Kosheri;

AGAINST: President Schwebel; Judges Oda, Herczegh;

(b) by twelve votes to three, finds that the Application filed by Libya on 3 March 1992 is admissible.

IN FAVOUR: Vice-President Weeramantry, Acting President; Judges Bedjaoui, Guillaume, Ranjeva, Shi, Fleischhauer, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc El-Kosheri;

AGAINST: President Schwebel; Judges Oda, Herczegh;

(3) by ten votes to five, declares that the objection raised by the United States according to which the claims of Libya became moot because Security Council resolutions 748 (1992) and 883 (1993) rendered them without object, does not, in the circumstances of the case, have an exclusively preliminary character.

IN FAVOUR: Vice-President Weeramantry, Acting President; Judges Bedjaoui, Ranjeva, Shi, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc El-Kosheri;

AGAINST: President Schwebel; Judges Oda, Guillaume, Herczegh, Fleischhauer."

Joint declarations were appended to the Judgment by Judges Bedjaoui, Ranjeva and Koroma; and by Judges Guillaume and Fleischhauer; Judge Herczegh also appended a declaration to the Judgment of the Court. Judges Kooijmans and Rezek appended separate opinions to the Judgment. President Schwebel and Judge Oda appended dissenting opinions.

70. By Orders of 30 March 1998, the Court fixed 30 December 1998 as the time-limit for the filing of the Counter-Memorials of the United Kingdom and the United States of America respectively.

4. Oil Platforms (Islamic Republic of Iran v. United States of America)

71. On 2 November 1992 the Islamic Republic of Iran filed in the Registry of the Court an Application instituting proceedings against the United States of America in respect of a dispute concerning the destruction of three Iranian oil platforms.

72. The Islamic Republic founded the jurisdiction of the Court for the purposes of these proceedings on Article XXI (2) of the Iran/United States Treaty of Amity, Economic Relations and Consular Rights, signed at Tehran on 15 August 1955.

73. In its Application Iran alleged that the destruction caused by several warships of the United States Navy, on 19 October 1987 and 18 April 1988, to three offshore oil production complexes, owned and operated for commercial purposes by the National Iranian Oil Company, constituted a fundamental breach of various provisions of the Treaty of Amity and of international law. In this connection Iran referred in particular to Articles I and X (1) of the Treaty which provide respectively: "There shall be firm and enduring peace and sincere friendship between the United States of America and Iran", and "Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation."

74. The Islamic Republic accordingly requested the Court to adjudge and declare as follows:

"(a) That the Court has jurisdiction under the Treaty of Amity to entertain the dispute and to rule upon the claims submitted by the Islamic Republic;

(b) That in attacking and destroying the oil platforms referred to in the Application on 19 October 1987 and 18 April 1988, the United States breached its obligations to the Islamic Republic, inter alia, under Articles I and X(1) of the Treaty of Amity and international law;

(c) That in adopting a patently hostile and threatening attitude towards the Islamic Republic that culminated in the attack and destruction of the Iranian oil platforms, the United States breached the object and purpose of the Treaty of Amity, including Articles I and X(1), and international law;

(d) That the United States is under an obligation to make reparations to the Islamic Republic for the violation of its international legal obligations in an amount to be determined by the Court at a subsequent stage of the proceedings. The Islamic Republic reserves the right to introduce and present to the Court in due course a precise evaluation of the reparations owed by the United States; and

(e) Any other remedy the Court may deem appropriate."

75. By an Order of 4 December 1992 (I.C.J. Reports 1992, p. 763), the President of the Court, taking into account an agreement of the Parties, fixed 31 May 1993 as the time-limit for the filing of the Memorial of Iran and 30 November 1993 for the filing of the Counter-Memorial of the United States.

76. By an Order of 3 June 1993 (I.C.J. Reports 1993, p. 35) the President of the Court, upon the request of Iran and after the United States had indicated that it had no objection, extended those time-limits to 8 June and 16 December 1993, respectively. The Memorial was filed within the prescribed time-limit.

77. The Islamic Republic of Iran chose Mr. François Rigaux to sit as judge ad hoc.

78. On 16 December 1993, within the extended time-limit for the filing of the Counter-Memorial, the United States of America filed a preliminary objection to the Court's jurisdiction. In accordance with the terms of Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits were suspended; by an Order of 18 January 1994 (I.C.J. Reports 1994, p. 3), the Court fixed 1 July 1994 as the time-limit within which Iran could present a written statement of its observations and submissions on the objection. That written statement was filed within the prescribed time-limit.

79. Public sittings to hear the oral arguments of the Parties on the preliminary objection filed by the United States of America were held between 16 and 24 September 1996.

80. At a public sitting held on 12 December 1996, the Court delivered its Judgment on the preliminary objection raised by the United States (I.C.J. Reports 1996, p. 803), rejecting that objection and finding that it had jurisdiction, on the basis of Article XXI, paragraph 2, of the Treaty of 1955, to entertain the claims made by Iran under Article X, paragraph 1, of that Treaty.

81. Judges Shahabuddeen, Ranjeva, Higgins and Parra-Aranguren and Judge ad hoc Rigaux appended separate opinions to the Judgment of the Court (I.C.J. Reports 1996, p. 822, 842, 847, 862 and 864); Vice-President Schwebel and Judge Oda appended dissenting opinions (ibid., p. 874 and 890).

82. By an Order of 16 December 1996 (I.C.J. Reports 1996, p. 902), the President of the Court, taking into account agreement of the Parties, fixed 23 June 1997 as the time-limit for the filing of the Counter-Memorial of the United States of America. Within the time-limit thus fixed the United States filed the Counter-Memorial and a Counter-Claim, requesting the Court to adjudge and declare:

"1. That in attacking vessels, laying mines in the Gulf and otherwise engaging in military actions in 1987-88 that were dangerous and detrimental to maritime commerce, the Islamic Republic of Iran breached its obligations to the United States under Article X of the 1955 Treaty, and

2. That the Islamic Republic of Iran is accordingly under an obligation to make full reparation to the United States for violating the 1955 Treaty in a form and amount to be determined by the Court at a subsequent stage of the proceedings."

83. By a letter of 2 October 1997 Iran informed the Court that it had "serious objections to the admissibility of the United States counter-claim", taking the position that the counter-claim as formulated by the United States did not meet the requirements of Article 80, paragraph 1, of the Rules of Court.

84. At a meeting which the Vice-President of the Court, Acting President, held on 17 October 1997 with the Agents of the Parties it was agreed that their respective Governments would submit written observations on the question of the admissibility of the United States counter-claim.

85. After Iran and the United States, in communications dated 18 November and 18 December 1997 respectively, had submitted these written observations the Court, by an Order of 10 March 1998, found that the counter-claim presented by the United States in its Counter-Memorial was admissible as such and formed part of the proceedings. It further directed Iran to submit a Reply and the United States to submit a Rejoinder, fixing the time-limits for those pleadings at 10 September 1998 and 23 November 1999 respectively.

86. Judges Oda and Higgins appended separate opinions to the Order; Judge ad hoc Rigaux appended a dissenting opinion.

87. By an Order of 26 May 1998, the Vice-President of the Court, Acting President, extended, at the request of Iran and taking into account the views expressed by the United States, the time-limits for Iran's Reply and the United States' Rejoinder to 10 December 1998 and 23 May 2000 respectively.

5. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)

88. On 20 March 1993, the Republic of Bosnia and Herzegovina filed in the Registry of the International Court of Justice an Application instituting proceedings against the Federal Republic of Yugoslavia "for violating the Genocide Convention".

89. The Application referred to several provisions of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, as well as of the Charter of the United Nations, which Bosnia and Herzegovina alleged were violated by Yugoslavia. It also referred in this respect to the four Geneva Conventions of 1949 and their Additional Protocol I of 1977, to the Hague Regulations on Land Warfare of 1907, and to the Universal Declaration of Human Rights.

90. The Application referred to Article IX of the Genocide Convention as the basis for the jurisdiction of the Court.

91. In the Application, Bosnia and Herzegovina requested the Court to adjudge and declare:

"(a) that Yugoslavia (Serbia and Montenegro) has breached, and is continuing to breach, its legal obligations toward the People and State of Bosnia and

Herzegovina under Articles I, II (a), II (b), II (c), II (d), III (a), III (b), III (c), III (d), III (e), IV and V of the Genocide Convention;

(b) that Yugoslavia (Serbia and Montenegro) has violated and is continuing to violate its legal obligations toward the People and State of Bosnia and Herzegovina under the four Geneva Conventions of 1949, their Additional Protocol I of 1977, the customary international laws of war including the Hague Regulations on Land Warfare of 1907, and other fundamental principles of international humanitarian law;

(c) that Yugoslavia (Serbia and Montenegro) has violated and continues to violate Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26 and 28 of the Universal Declaration of Human Rights with respect to the citizens of Bosnia and Herzegovina;

(d) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has killed, murdered, wounded, raped, robbed, tortured, kidnapped, illegally detained, and exterminated the citizens of Bosnia and Herzegovina, and is continuing to do so;

(e) that in its treatment of the citizens of Bosnia and Herzegovina, Yugoslavia (Serbia and Montenegro) has violated, and is continuing to violate, its solemn obligations under Articles 1 (3), 55 and 56 of the United Nations Charter;

(f) that Yugoslavia (Serbia and Montenegro) has used and is continuing to use force and the threat of force against Bosnia and Herzegovina in violation of Articles 2 (1), 2 (2), 2 (3), 2 (4), and 33 (1), of the United Nations Charter;

(g) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has used and is using force and the threat of force against Bosnia and Herzegovina;

(h) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has violated and is violating the sovereignty of Bosnia and Herzegovina by:

— armed attacks against Bosnia and Herzegovina by air and land;
— aerial trespass into Bosnian airspace;
— efforts by direct and indirect means to coerce and intimidate the Government of Bosnia and Herzegovina;

(i) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has intervened and is intervening in the internal affairs of Bosnia and Herzegovina;

(j) that Yugoslavia (Serbia and Montenegro), in recruiting, training, arming, equipping, financing, supplying and otherwise encouraging, supporting, aiding, and directing military and paramilitary actions in and against Bosnia and Herzegovina by means of its agents and surrogates, has violated and is violating its express charter and treaty obligations to Bosnia and Herzegovina and, in particular, its charter and treaty obligations under Article 2 (4) of the United Nations Charter, as well as its obligations under general and customary international law;

(k) that under the circumstances set forth above, Bosnia and Herzegovina has the sovereign right to defend Itself and its People under United Nations Charter Article 51 and customary international law, including by means of immediately obtaining military weapons, equipment, supplies and troops from other States;

(l) that under the circumstances set forth above, Bosnia and Herzegovina has the sovereign right under United Nations Charter Article 51 and customary international law to request the immediate assistance of any State to come to its defence, including by military means (weapons, equipment supplies, troops, etc.);

(m) that Security Council resolution 713 (1991), imposing a weapons embargo upon the former Yugoslavia, must be construed in a manner that shall not impair the inherent right of individual or collective self-defence of Bosnia and Herzegovina under the terms of United Nations Charter Article 51 and the rules of customary international law;

(n) that all subsequent Security Council resolutions that refer to or reaffirm resolution 713 (1991) must be construed in a manner that shall not impair the inherent right of individual or collective self-defence of Bosnia and Herzegovina under the terms of United Nations Charter Article 51 and the rules of customary international law;

(o) that Security Council resolution 713 (1991) and all subsequent Security Council resolutions referring thereto or reaffirming thereof must not be construed to impose an arms embargo upon Bosnia and Herzegovina, as required by Articles 24 (1) and 51 of the United Nations Charter and in accordance with the customary doctrine of ultra vires;

(p) that pursuant to the right of collective self-defence recognized by United Nations Charter Article 51, all other States Parties to the Charter have the right to come to the immediate defence of Bosnia and Herzegovina - at its request - including by means of immediately providing It with weapons, military equipment and supplies, and armed forces (soldiers, sailors, airpeople, etc.);

(q) that Yugoslavia (Serbia and Montenegro) and its agents and surrogates are under an obligation to cease and desist immediately from its breaches of the foregoing legal obligations, and is under a particular duty to cease and desist immediately:

— from its systematic practice of so-called 'ethnic cleansing' of the citizens and sovereign territory of Bosnia and Herzegovina;

— from the murder, summary execution, torture, rape, kidnapping, mayhem, wounding, physical and mental abuse, and detention of the citizens of Bosnia and Herzegovina;

— from the wanton devastation of villages, towns, districts, cities, and religious institutions in Bosnia and Herzegovina;

— from the bombardment of civilian population centres in Bosnia and Herzegovina, and especially its capital, Sarajevo;

— from continuing the siege of any civilian population centres in Bosnia and Herzegovina, and especially its capital, Sarajevo;

— from the starvation of the civilian population in Bosnia and Herzegovina;

— from the interruption of, interference with, or harassment of humanitarian relief supplies to the citizens of Bosnia and Herzegovina by the international community;

— from all use of force — whether direct or indirect, overt or covert — against Bosnia and Herzegovina, and from all threats of force against Bosnia and Herzegovina;

— from all violations of the sovereignty, territorial integrity or political independence of Bosnia and Herzegovina, including all intervention, direct or indirect, in the internal affairs of Bosnia and Herzegovina;

— from all support of any kind — including the provision of training, arms, ammunition, finances, supplies, assistance, direction or any other form of support — to any nation, group, organization, movement or individual engaged or planning to engage in military or paramilitary actions in or against Bosnia and Herzegovina;

(r) that Yugoslavia (Serbia and Montenegro) has an obligation to pay Bosnia and Herzegovina, in its own right and as parens patriae for its citizens, reparations for damages to persons and property as well as to the Bosnian economy and environment caused by the foregoing violations of international law in a sum to be determined by the Court. Bosnia and Herzegovina reserves the right to introduce to the Court a precise evaluation of the damages caused by Yugoslavia (Serbia and Montenegro)."

92. On the same day, the Government of Bosnia and Herzegovina, stating that:

"The overriding objective of this Request is to prevent further loss of human life in Bosnia and Herzegovina",

and that:

"The very lives, well-being, health, safety, physical, mental and bodily integrity, homes, property and personal possessions of hundreds of thousands of people in Bosnia and Herzegovina are right now at stake, hanging in the balance, awaiting the order of this Court",

filed a request for the indication of provisional measures under Article 41 of the Statute of the Court.

93. The provisional measures requested were as follows:

"1. That Yugoslavia (Serbia and Montenegro), together with its agents and surrogates in Bosnia and elsewhere, must immediately cease and desist from all acts of genocide and genocidal acts against the People and State of Bosnia and Herzegovina, including but not limited to murder; summary executions; torture; rape; mayhem; so-called 'ethnic cleansing'; the wanton devastation of villages, towns, districts and cities; the siege of villages, towns, districts and cities; the starvation of the civilian population; the interruption of, interference with, or harassment of humanitarian relief supplies to the civilian population by the international community; the bombardment of civilian population centres; and the detention of civilians in concentration camps or otherwise.

2. That Yugoslavia (Serbia and Montenegro) must immediately cease and desist from providing, directly or indirectly, any type of support — including training, weapons, arms, ammunition, supplies, assistance, finances, direction or any other form of support — to any nation, group, organization, movement, militia or individual engaged in or planning to engage in military or paramilitary activities in or against the People, State and Government of Bosnia and Herzegovina.

3. That Yugoslavia (Serbia and Montenegro) itself must immediately cease and desist from any and all types of military or paramilitary activities by its own officials, agents, surrogates, or forces in or against the People, State and Government of Bosnia and Herzegovina, and from any other use or threat of force in its relations with Bosnia and Herzegovina.

4. That under the current circumstances, the Government of Bosnia and Herzegovina has the right to seek and receive support from other States in order to defend Itself and its People, including by means of immediately obtaining military weapons, equipment, and supplies.

5. That under the current circumstances, the Government of Bosnia and Herzegovina has the right to request the immediate assistance of any State to come to its defence, including by means of immediately providing weapons, military equipment and supplies, and armed forces (soldiers, sailors, airpeople, etc.).

6. That under the current circumstances, any State has the right to come to the immediate defence of Bosnia and Herzegovina - at its request - including by means of immediately providing weapons, military equipment and supplies, and armed forces (soldiers, sailors, and airpeople, etc.)."

94. Hearings on the request for the indication of provisional measures were held on 1 and 2 April 1993. At two public sittings the Court heard the oral observations of each of the Parties.

95. At a public sitting held on 8 April 1993, the President of the Court read out the Order on the request for provisional measures made by Bosnia and Herzegovina (I.C.J. Reports 1993, p. 3) by which the Court indicated, pending its final decision in the proceedings instituted on 20 March 1993 by the Republic of Bosnia and Herzegovina against the Federal Republic of Yugoslavia, the following provisional measures:

(a) The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) should immediately, in pursuance of its undertaking in the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, take all measures within its power to prevent commission of the crime of genocide; and the Government of the Federal

Republic of Yugoslavia (Serbia and Montenegro) should in particular ensure that any military, paramilitary or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control, direction or influence, do not commit any acts of genocide, of conspiracy to commit genocide, of direct and public incitement to commit genocide, or of complicity in genocide, whether directed against the Muslim population of Bosnia and Herzegovina or against any other national, ethnical, racial or religious group.

(b) The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Government of the Republic of Bosnia and Herzegovina should not take any action and should ensure that no action is taken which may aggravate or extend the existing dispute over the prevention or punishment of the crime of genocide, or render it more difficult of solution.

96. Judge Tarassov appended a declaration to the Order (ibid., pp. 26-27).

97. By an Order of 16 April 1993 (I.C.J. Reports 1993, p. 29) the President of the Court, taking into account an agreement of the Parties, fixed 15 October 1993 as the time-limit for the filing of the Memorial of Bosnia and Herzegovina and 15 April 1994 for the filing of the Counter-Memorial of Yugoslavia.

98. Bosnia and Herzegovina chose Mr. Elihu Lauterpacht and Yugoslavia Mr. Milenko Kreća to sit as judges ad hoc.

99. On 27 July 1993 the Republic of Bosnia and Herzegovina filed a second request for the indication of provisional measures, stating that:

"This extraordinary step is being taken because the Respondent has violated each and everyone of the three measures of protection on behalf of Bosnia and Herzegovina

that were indicated by this Court on 8 April 1993, to the grave detriment of both the People and State of Bosnia and Herzegovina. In addition to continuing its campaign of genocide against the Bosnian People — whether Muslim, Christian, Jew, Croat or Serb — the Respondent is now planning, preparing, conspiring to, proposing, and negotiating the partition, dismemberment, annexation and incorporation of the sovereign state of Bosnia and Herzegovina — a Member of the United Nations Organization — by means of genocide."

100. The provisional measures then requested were as follows:

"1. That Yugoslavia (Serbia and Montenegro) must immediately cease and desist from providing, directly or indirectly, any type of support — including training, weapons, arms, ammunition, supplies, assistance, finances, direction or any other form of support — to any nation, group, organization, movement, military, militia or paramilitary force, irregular armed unit, or individual in Bosnia and Herzegovina for any reason or purpose whatsoever.

2. That Yugoslavia (Serbia and Montenegro) and all of its public officials — including and especially the President of Serbia, Mr. Slobodan Milosevic — must immediately cease and desist from any and all efforts, plans, plots, schemes, proposals or negotiations to partition, dismember, annex or incorporate the sovereign territory of Bosnia and Herzegovina.

3. That the annexation or incorporation of any sovereign territory of the Republic of Bosnia and Herzegovina by Yugoslavia (Serbia and Montenegro) by any means or for any reason shall be deemed illegal, null, and void ab initio.

4. That the Government of Bosnia and Herzegovina must have the means 'to prevent' the commission of acts of genocide against its own People as required by Article I of the Genocide Convention.

5. That all Contracting Parties to the Genocide Convention are obliged by Article I thereof 'to prevent' the commission of acts of genocide against the People and State of Bosnia and Herzegovina.

6. That the Government of Bosnia and Herzegovina must have the means to defend the People and State of Bosnia and Herzegovina from acts of genocide and partition and dismemberment by means of genocide.

7. That all Contracting Parties to the Genocide Convention have the obligation thereunder 'to prevent' acts of genocide, and partition and dismemberment by means of genocide, against the People and State of Bosnia and Herzegovina.

8. That in order to fulfil its obligations under the Genocide Convention under the current circumstance, the Government of Bosnia and Herzegovina must have the ability to obtain military weapons, equipment, and supplies from other Contracting Parties.

9. That in order to fulfil their obligations under the Genocide Convention under the current circumstances, all Contracting Parties thereto must have the ability to provide military weapons, equipment, supplies and armed forces (soldiers, sailors, airpeople) to the Government of Bosnia and Herzegovina at its request.

10. That United Nations Peacekeeping Forces in Bosnia and Herzegovina (i.e., UNPROFOR) must do all in their power to ensure the flow of humanitarian relief supplies to the Bosnian People through the Bosnian city of Tuzla."

101. On 5 August 1993 the President of the Court addressed a message to both Parties, referring to Article 74, paragraph 4, of the Rules of Court, which enables him, pending the meeting of the Court, "to call upon the parties to act in such a way as will enable any order the Court may make on the request for provisional measures to have its appropriate effects", and stating:

"I do now call upon the Parties so to act, and I stress that the provisional measures already indicated in the Order which the Court made after hearing the Parties, on 8 April 1993, still apply.

Accordingly I call upon the Parties to take renewed note of the Court's Order and to take all and any measures that may be within their power to prevent any commission, continuance, or encouragement of the heinous international crime of genocide."

102. On 10 August 1993 Yugoslavia filed a request, dated 9 August 1993, for the indication of provisional measures, whereby it requested the Court to indicate the following provisional measure:

"The Government of the so-called Republic of Bosnia and Herzegovina should immediately, in pursuance of its obligation under the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, take all measures within its power to prevent commission of the crime of genocide against the Serb ethnic group."

103. The hearings concerning the requests for the indication of provisional measures were held on 25 and 26 August 1993. In the course of two public sittings the Court heard statements from each of the Parties.

104. At a public sitting held on 13 September 1993, the President of the Court read out the Order concerning requests for the indication of provisional measures (I.C.J. Reports 1993, p. 325) by which the Court reaffirmed the provisional measures indicated in its Order of 8 April 1993, which measures, the Court stated, should be immediately and effectively implemented.

105. Judge Oda appended a declaration to the Order (I.C.J. Reports 1993, p. 351); Judges Shahabuddeen, Weeramantry and Ajibola and Judge ad hoc Lauterpacht appended their individual opinions (ibid., pp. 353, 370, 390 and 407); and Judge Tarassov and Judge ad hoc Kreća appended their dissenting opinions (ibid., pp. 449 and 453).

106. By an Order of 7 October 1993 (I.C.J. Reports 1993, p. 470), the Vice-President of the Court, at the request of Bosnia and Herzegovina and after Yugoslavia had expressed its opinion, extended to 15 April 1994 the time-limit for the filing of the Memorial of Bosnia and Herzegovina, and to 15 April 1995 the time-limit for the filing of the Counter-Memorial of Yugoslavia. The Memorial was filed within the prescribed time-limit.

107. By an Order of 21 March 1995 (I.C.J. Reports 1995, p. 80), the President of the Court, upon a request of the Agent of Yugoslavia and after the views of Bosnia and Herzegovina had been ascertained, extended to 30 June 1995 the time-limit for the filing of the Counter-Memorial of Yugoslavia.

108. On 26 June 1995, within the extended time-limit for the filing of its Counter-Memorial, Yugoslavia, filed certain preliminary objections in the above case. The objections related, firstly,

to the admissibility of the Application and, secondly, to the jurisdiction of the Court to deal with the case.

109. By virtue of Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits are suspended when preliminary objections are filed; proceedings have then to be organized for the consideration of those preliminary objections in accordance with the provision of that Article.

110. By an Order of 14 July 1995 (I.C.J. Reports 1995, p. 279), the President of the Court, taking into account the views expressed by the Parties, fixed 14 November 1995 as the time-limit within which the Republic of Bosnia and Herzegovina might present a written statement of its observations and submissions on the preliminary objections raised by the Federal Republic of Yugoslavia. Bosnia and Herzegovina filed such a statement within the prescribed time-limit.

111. Public sittings to hear the oral arguments of the Parties on the preliminary objections raised by Yugoslavia were held between 29 April and 3 May 1996.

112. At a public sitting held on 11 July 1996, the Court delivered its Judgment on the preliminary objections (I.C.J. Reports 1996, p. 595), by which it rejected the objections raised by Yugoslavia, finding that, on the basis of Article XI of the Convention on the Prevention and Punishment of the Crime of Genocide, it had jurisdiction; dismissed the additional basis of jurisdiction invoked by Bosnia and Herzegovina and found that the Application was admissible.

113. Judge Oda appended a declaration to the Judgment of the Court (ibid., p. 625); Judges Shi and Vereshchetin appended a joint declaration (ibid., p. 631); Judge ad hoc Lauterpacht also appended a declaration (ibid., p. 633); Judges Shahabuddeen, Weeramantry and Parra-Aranguren appended separate opinions to the Judgment (ibid., pp. 634, 640 and 656); Judge ad hoc Kreća appended a dissenting opinion (ibid., p. 658).

114. By an Order of 23 July 1996 (I.C.J. Reports 1996, p. 797), the President of the Court, taking into account the views expressed by the Parties, fixed 23 July 1997 as the time-limit for the filing of the Counter-Memorial of Yugoslavia. The Counter-Memorial was filed within the prescribed time-limit. It included counter-claims, by which Yugoslavia requested the Court to adjudge and declare:

"3. Bosnia and Herzegovina is responsible for the acts of genocide committed against the Serbs in Bosnia and Herzegovina and for other violations of the obligations established by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide:

— because it has incited acts of genocide by the 'Islamic Declaration', and in particular by the position contained in it that 'there can be no peace or coexistence between "Islamic faith" and "non-Islamic" social and political institutions';

— because it has incited acts of genocide by the Novi Vox, paper of the Muslim youth, and in particular by the verses of a 'Patriotic Song' which reads as follows:

'Dear mother, I'm going to plant willows,
We'll hang Serbs from them.
Dear mother, I'm going to sharpen knives,
We'll soon fill pits again';

— because it has incited acts of genocide by the paper Zmaj od Bosne, and in particular by the sentence in an article published in it that 'Each Muslim must name a Serb and take oath to kill him';

— because public calls for the execution of Serbs were broadcast on radio 'Hajat' and thereby acts of genocide were incited;

— because the armed forces of Bosnia and Herzegovina, as well as other organs of Bosnia and Herzegovina have committed acts of genocide and other acts prohibited by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, against the Serbs in Bosnia and Herzegovina, which have been stated in Chapter Seven of the Counter-Memorial;

— because Bosnia and Herzegovina has not prevented the acts of genocide and other acts prohibited by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, against the Serbs on its territory, which have been stated in Chapter Seven of the Counter-Memorial.

4. Bosnia and Herzegovina has the obligation to punish the persons held responsible for the acts of genocide and other acts prohibited by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

5. Bosnia and Herzegovina is bound to take necessary measures so that the said acts would not be repeated in the future.

6. Bosnia and Herzegovina is bound to eliminate all consequences of the violation of the obligations established by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and provide adequate compensation."

115. By a letter of 28 July 1997 Bosnia and Herzegovina informed the Court that "the Applicant [was] of the opinion that the Counter-Claim submitted by the Respondent . . . [did] not meet the criterion of Article 80, paragraph 1, of the Rules of Court and should therefore not be joined to the original proceedings."

116. At a meeting which the President of the Court held on 22 September 1997 with the Agents of the Parties both Parties accepted that their respective Governments would submit written observations on the question of the admissibility of the Yugoslav Counter-Claims.

117. After Bosnia and Herzegovina and Yugoslavia, in communications dated 9 October and 23 October 1997 respectively, had submitted written observations, the Court, by an Order of 17 December 1997, found that the Counter-Claims submitted by Yugoslavia in its Counter-Memorial were admissible as such and formed part of the proceedings. It further directed Bosnia Herzegovina to submit a Reply and Yugoslavia to submit a Rejoinder, fixing the time-limits for those pleadings at 23 January and 23 July 1998 respectively.

118. Judge ad hoc Kreća appended a declaration to the Order; Judge Koroma and Judge ad hoc Lauterpacht appended separate opinions; and Vice-President Weeramantry appended a dissenting opinion.

119. By an Order of 22 January 1998, the President of the Court, at the request of Bosnia and Herzegovina and taking into account the views expressed by Yugoslavia, extended the time-limits for the Reply of Bosnia and Herzegovina and the Rejoinder of Yugoslavia to 23 April 1998 and 22 January 1999 respectively. The Reply of Bosnia and Herzegovina was filed within the prescribed time-limit.

6. Gabčíkovo-Nagymaros Project (Hungary/Slovakia)

120. On 23 October 1992 the Ambassador of the Republic of Hungary to the Netherlands filed in the Registry of the International Court of Justice an Application instituting proceedings against the Czech and Slovak Federal Republic in a dispute concerning the projected diversion of

the Danube. In that document the Hungarian Government, before detailing its case, invited the Czech and Slovak Federal Republic to accept the jurisdiction of the Court.

121. A copy of the Application was transmitted to the Government of the Czech and Slovak Federal Republic in accordance with Article 38, paragraph 5, of the Rules of Court, which reads as follows:

> "When the Applicant State proposes to found the jurisdiction of the Court upon a consent thereto yet to be given or manifested by the State against which such application is made, the application shall be transmitted to that State. It shall not however be entered in the General List, nor any action be taken in the proceedings, unless and until the State against which such application is made consents to the Court's jurisdiction for the purposes of the case."

122. Following negotiations under the aegis of the European Communities between Hungary and the Czech and Slovak Federal Republic, which dissolved into two separate States on 1 January 1993, the Governments of the Republic of Hungary and of the Slovak Republic notified jointly, on 2 July 1993, to the Registrar of the Court a Special Agreement, signed at Brussels on 7 April 1993, for the submission to the Court of certain issues arising out of differences which had existed between the Republic of Hungary and the Czech and Slovak Federal Republic, regarding the implementation and the termination of the Budapest Treaty of 16 September 1977 on the Construction and Operation of the Gabčíkovo-Nagymaros Barrage System and on the construction and operation of the "provisional solution". The Special Agreement records that the Slovak Republic is in this respect the sole successor State of the Czech and Slovak Federal Republic.

123. In Article 2 of the Special Agreement:

"(1) The Court is requested to decide on the basis of the Treaty and rules and principles of general international law, as well as such other treaties as the Court may find applicable,

(a) whether the Republic of Hungary was entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros Project and on the part of the Gabčíkovo Project for which the Treaty attributed responsibility to the Republic of Hungary;

(b) whether the Czech and Slovak Federal Republic was entitled to proceed, in November 1991, to the 'provisional solution' and to put into operation from October 1992 this system, described in the Report of the Working Group of Independent Experts of the Commission of the European Communities, the Republic of Hungary and the Czech and Slovak Federal Republic dated 23 November 1992 (damming up of the Danube at river kilometre 1.7 on Czechoslovak territory and resulting consequences on water and navigation course);

(c) what are the legal effects of the notification, on 19 May 1992, of the termination of the Treaty by the Republic of Hungary.

(2) The Court is also requested to determine the legal consequences, including the rights and obligations for the Parties, arising from its Judgment on the questions in paragraph (1) of this Article."

124. By an Order of 14 July 1993 (I.C.J. Reports 1993, p. 319), the Court decided that, as provided in Article 3, paragraph 2, of the Special Agreement and Article 46, paragraph 1, of the Rules of Court, each Party should file a Memorial and a Counter-Memorial, within the same

time-limit, and fixed 2 May 1994 and 5 December 1994 as the time-limits for the filing of the Memorial and Counter-Memorial, respectively. The Memorials and Counter-Memorials were filed within the prescribed time-limits.

125. Slovakia chose Mr. Krzysztof J. Skubiszewski to sit as judge ad hoc.

126. By an Order of 20 December 1994 (I.C.J. Reports 1994, p. 151), the President of the Court, taking into account the views of the Parties, fixed 20 June 1995 as the time-limit for the filing of a Reply by each of the Parties. Those Replies were filed within the prescribed time-limit.

127. In June 1995 the Agent of Slovakia asked the Court, by letter, to visit the site of the Gabčíkovo-Nagymaros hydroelectric dam project on the river Danube with regard to the obtaining of evidence in the above case. The Agent of Hungary thereupon informed the Court that his country would be pleased to co-operate in organizing such a visit.

128. In November 1995, in Budapest and New York, the two Parties then signed a "Protocol of Agreement" on the proposal of a visit by the Court, which, after dates had been fixed with the approval of the Court, was supplemented by Agreed Minutes on 3 February 1997.

129. By an Order of 5 February 1997 (I.C.J. Reports 1997, p. 3) the Court decided to "exercise its functions with regard to the obtaining of evidence by visiting a place or locality to which the case relates" (cf. Art. 66 of the Rules of Court) and to "adopt to that end the arrangements proposed by the Parties". The visit, which was the first in the Court's fifty-year history, took place from 1 to 4 April 1997, between the first and seconds round of oral hearings.

130. The first round of those hearings took place from 3 to 7 March and from 24 to 27 March 1997. A video-film was shown by each of the Parties. The second round took place on 10 and 11 and on 14 and 15 April 1997.

131. At a public sitting held on 25 September 1997, the Court delivered its Judgment, the operative paragraph of which reads as follows:

"For these reasons,

THE COURT,

(1) Having regard to Article 2, paragraph 1, of the Special Agreement,

A. Finds, by fourteen votes to one, that Hungary was not entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros Project and on the part of the Gabčíkovo Project for which the Treaty of 16 September 1977 and related instruments attributed responsibility to it;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Shi, Fleischhauer, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc Skubiszewski;

AGAINST: Judge Herczegh;

B. Finds, by nine votes to six, that Czechoslovakia was entitled to proceed, in November 1991, to the "provisional solution" as described in the terms of the Special Agreement;

IN FAVOUR: Vice-President Weeramantry; Judges Oda, Guillaume, Shi, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans; Judge ad hoc Skubiszewski;

AGAINST: President Schwebel; Judges Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Rezek;

C. Finds, by ten votes to five, that Czechoslovakia was not entitled to put into operation, from October 1992, this "provisional solution";

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Kooijmans, Rezek;

AGAINST: Judges Oda, Koroma, Vereshchetin, Parra-Aranguren; Judge ad hoc Skubiszewski;

D. Finds, by eleven votes to four, that the notification, on 19 May 1992, of the termination of the Treaty of 16 September 1977 and related instruments by Hungary did not have the legal effect of terminating them;

IN FAVOUR: Vice-President Weeramantry; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Shi, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans; Judge ad hoc Skubiszewski;

AGAINST: President Schwebel; Judges Herczegh, Fleischhauer, Rezek;

(2) Having regard to Article 2, paragraph 2, and Article 5 of the Special Agreement,

A. Finds, by twelve votes to three, that Slovakia, as successor to Czechoslovakia, became a party to the Treaty of 16 September 1977 as from 1 January 1993;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Shi, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans; Judge ad hoc Skubiszewski;

AGAINST: Judges Herczegh, Fleischhauer, Rezek;

B. Finds, by thirteen votes to two, that Hungary and Slovakia must negotiate in good faith in the light of the prevailing situation, and must take all necessary measures to ensure the achievement of the objectives of the Treaty of 16 September 1977, in accordance with such modalities as they may agree upon;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Shi, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc Skubiszewski;

AGAINST: Judges Herczegh, Fleischhauer;

C. Finds, by thirteen votes to two, that, unless the Parties otherwise agree, a joint operational régime must be established in accordance with the Treaty of 16 September 1977;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Shi, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc Skubiszewski;

AGAINST: Judges Herczegh, Fleischhauer;

D. Finds, by twelve votes to three, that, unless the Parties otherwise agree, Hungary shall compensate Slovakia for the damage sustained by Czechoslovakia and by Slovakia on account of the suspension and abandonment by Hungary of works for which it was responsible; and Slovakia shall compensate Hungary for the damage it has sustained on account of the putting into operation of the "provisional solution" by Czechoslovakia and its maintenance in service by Slovakia;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc Skubiszewski;

AGAINST: Judges Oda, Koroma, Vereshchetin;

E. Finds, by thirteen votes to two, that the settlement of accounts for the construction and operation of the works must be effected in accordance with the relevant provisions of the Treaty of 16 September 1977 and related instruments, taking due account of such measures as will have been taken by the Parties in application of points 2 B and C of the present operative paragraph.

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Shi, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc Skubiszewski;

AGAINST: Judges Herczegh, Fleischhauer."

President Schwebel and Judge Rezek appended declarations to the Judgment. Vice-President Weeramantry, Judges Bedjaoui and Koroma appended separate opinions. Judges Oda, Ranjeva,

Herczegh, Fleischhauer, Vereshchetin and Parra-Aranguren, and Judge ad hoc Skubiszewski appended dissenting opinions.

7. Land and Maritime Boundary between Cameroon and Nigeria
(Cameroon v. Nigeria)

132. On 29 March 1994 the Republic of Cameroon filed in the Registry of the Court an Application instituting proceedings against the Federal Republic of Nigeria in a dispute concerning the question of sovereignty over the peninsula of Bakassi, and requesting the Court to determine the course of the maritime frontier between the two States in so far as that frontier had not already been established in 1975.

133. As a basis for the jurisdiction of the Court, the Application refers to the declarations made by Cameroon and Nigeria under Article 36, paragraph 2, of the Statute of the Court, by which they accept that jurisdiction as compulsory.

134. In the Application Cameroon refers to "an aggression by the Federal Republic of Nigeria, whose troops are occupying several Cameroonian localities on the Bakassi peninsula", resulting "in great prejudice to the Republic of Cameroon", and requests the Court to adjudge and declare:

"(a) that sovereignty over the peninsula of Bakassi is Cameroonian, by virtue of international law, and that that peninsula is an integral part of the territory of Cameroon;

(b) that the Federal Republic of Nigeria has violated and is violating the fundamental principle of respect for frontiers inherited from colonization (uti possidetis juris);

(c) that by using force against the Republic of Cameroon, the Federal Republic of Nigeria has violated and is violating its obligations under international treaty law and customary law;

(d) that the Federal Republic of Nigeria, by militarily occupying the Cameroonian peninsula of Bakassi, has violated and is violating the obligations incumbent upon it by virtue of treaty law and customary law;

(e) that in view of these breaches of legal obligation, mentioned above, the Federal Republic of Nigeria has the express duty of putting an end to its military presence in Cameroonian territory, and effecting an immediate and unconditional withdrawal of its troops from the Cameroonian peninsula of Bakassi;

(e') that the internationally unlawful acts referred to under (a), (b), (c), (d), and (e) above involve the responsibility of the Federal Republic of Nigeria;

(e") that, consequently, reparation in an amount to be determined by the Court is due from the Federal Republic of Nigeria to the Republic of Cameroon, which reserves the introduction before the Court of [proceedings for] the precise assessment of the damage caused by the Federal Republic of Nigeria;

(f) in order to prevent any dispute arising between the two States concerning their maritime boundary, the Republic of Cameroon requests the Court to proceed to prolong the course of its maritime boundary with the Federal Republic of Nigeria up to the limit of the maritime zones which international law places under their respective jurisdictions".

135. On 6 June 1994 Cameroon filed in the Registry of the Court an Additional Application "for the purpose of extending the subject of the dispute" to a further dispute described as relating

essentially "to the question of sovereignty over a part of the territory of Cameroon in the area of Lake Chad", while also asking the Court to specify definitively the frontier between Cameroon and Nigeria from Lake Chad to the sea. Cameroon requested the Court to adjudge and declare:

"(a) that sovereignty over the disputed parcel in the area of Lake Chad is Cameroonian, by virtue of international law, and that that parcel is an integral part of the territory of Cameroon;

(b) that the Federal Republic of Nigeria has violated and is violating the fundamental principle of respect for frontiers inherited from colonization (uti possidetis juris), and its recent legal commitments concerning the demarcation of frontiers in Lake Chad;

(c) that the Federal Republic of Nigeria, by occupying, with the support of its security forces, parcels of Cameroonian territory in the area of Lake Chad, has violated and is violating its obligations under treaty law and customary law;

(d) that in view of these legal obligations, mentioned above, the Federal Republic of Nigeria has the express duty of effecting an immediate and unconditional withdrawal of its troops from Cameroonian territory in the area of Lake Chad;

(e) that the internationally unlawful acts referred to under (a), (b), and (d) above involve the responsibility of the Federal Republic of Nigeria;

(e') that consequently, and on account of the material and non-material damage inflicted upon the Republic of Cameroon, reparation in an amount to be determined by the Court is due from the Federal Republic of Nigeria to the Republic of Cameroon, which reserves the introduction before the

Court of [proceedings for] a precise assessment of the damage caused by the Federal Republic of Nigeria;

(f) that in view of the repeated incursions of Nigerian groups and armed forces into Cameroonian territory, all along the frontier between the two countries, the consequent grave and repeated incidents, and the vacillating and contradictory attitude of the Federal Republic of Nigeria in regard to the legal instruments defining the frontier between the two countries and the exact course of that frontier, the Republic of Cameroon respectfully asks the Court to specify definitively the frontier between Cameroon and the Federal Republic of Nigeria from Lake Chad to the sea".

136. Cameroon further requested the Court to join the two Applications "and to examine the whole in a single case".

137. At a meeting between the President of the Court and the representatives of the Parties held on 14 June 1994, the Agent of Nigeria indicated that his Government had no objection to the Additional Application being treated as an amendment to the initial Application, so that the Court could deal with the whole as one case.

138. Cameroon chose Mr. Kéba Mbaye and Nigeria Mr. Bola A. Ajibola to sit as judges ad hoc.

139. By an Order of 16 June 1994 (I.C.J. Reports 1994, p. 105), the Court, seeing no objection to the suggested procedure, fixed 16 March 1995 as the time-limit for filing the Memorial of Cameroon, and 18 December 1995 as the time-limit for filing the Counter-Memorial of Nigeria. The Memorial was filed within the prescribed time-limit.

140. On 13 December 1995, within the time-limit for the filing of its Counter-Memorial, Nigeria filed certain preliminary objections to the jurisdiction of the Court and to the admissibility of the claims of Cameroon.

141. By virtue of Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits are suspended when preliminary objections are filed; proceedings have then to be organized for the consideration of those preliminary objections in accordance with the provisions of that Article.

142. By an Order of 10 January 1996 (I.C.J. Reports 1996, p. 3), the President of the Court, taking into account the views expressed by the Parties at a meeting between the President and the Agents of the Parties held on 10 January 1996, fixed 15 May 1996 as the time-limit within which Cameroon might present a written statement of its observations and submissions on the preliminary objections raised by Nigeria. Cameroon filed such a statement within the prescribed time-limit.

143. On 12 February 1996, the Registry of the International Court of Justice received from Cameroon a request for the indication of provisional measures, with reference to "serious armed incidents" which had taken place between Cameroonian and Nigerian forces in the Bakassi Peninsula beginning on 3 February 1996.

144. In its request Cameroon referred to the submissions made in its Application of 29 May 1994, supplemented by an Additional Application of 6 June of that year, as also summed up in its Memorial of 16 March 1995, and requested the Court to indicate the following provisional measures:

"(1) the armed forces of the Parties shall withdraw to the position they were occupying before the Nigerian armed attack of 3 February 1996;

(2) the Parties shall abstain from all military activity along the entire boundary until the judgment of the Court is given;

(3) the Parties shall abstain from any act or action which might hamper the gathering of evidence in the present case".

145. Public sittings to hear the oral observations of the Parties on the request for the indication of provisional measures were held between 5 and 8 March 1996.

146. At a public sitting, held on 15 March 1996, the President of the Court read the Order on the request for provisional measures made by Cameroon (I.C.J. Reports 1996, p. 13), by which the Court indicated that "both Parties should ensure that no action of any kind, and particularly no action by their armed forces, is taken which might prejudice the rights of the other in respect of whatever judgment the Court may render in the case, or which might aggravate or extend the dispute before it;" that they "should observe the agreement reached between the Ministers for Foreign Affairs in Kara, Togo, on 17 February 1996, for the cessation of all hostilities in the Bakassi Peninsula;" that they "should ensure that the presence of any armed forces in the Bakassi Peninsula does not extend beyond the positions in which they were situated prior to 3 February 1996;" that they "should take all necessary steps to conserve evidence relevant to the present case within the disputed area;" and that they "should lend every assistance to the fact-finding mission which the Secretary-General of the United Nations has proposed to send to the Bakassi Peninsula".

147. Judges Oda, Shahabuddeen, Ranjeva and Koroma appended declarations to the Order of the Court (ibid., pp. 26, 28, 29 and 30); Judges Weeramantry, Shi and Vereshchetin appended a joint declaration (ibid., p. 31); Judge ad hoc Mbaye also appended a declaration (ibid., p. 32). Judge ad hoc Ajibola appended a separate opinion to the Order (ibid., p. 35).

148. Public sittings to hear the oral arguments of the Parties on the preliminary objections raised by Nigeria were held from 2 to 11 March 1998.

149. At a public sitting held on 11 June 1998, the Court delivered its Judgment on the preliminary objections, the operative paragraph of which reads as follows:

"For these reasons,

THE COURT,

(1) (a) by fourteen votes to three,

Rejects the first preliminary objection;

IN FAVOUR: President Schwebel; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc Mbaye;

AGAINST: Vice-President Weeramantry; Judge Koroma; Judge ad hoc Ajibola;

(b) by sixteen votes to one,

Rejects the second preliminary objection;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek; Judges ad hoc Mbaye, Ajibola;

AGAINST: Judge Koroma;

(c) by fifteen votes to two,

Rejects the third preliminary objection;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc Mbaye;

AGAINST: Judge Koroma; Judge ad hoc Ajibola;

(d) by thirteen votes to four,

Rejects the fourth preliminary objection;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Kooijmans, Rezek; Judge ad hoc Mbaye;

AGAINST: Judges Oda, Koroma, Parra-Aranguren; Judge ad hoc Ajibola;

(e) by thirteen votes to four,

Rejects the fifth preliminary objection;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges

Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc Mbaye;

AGAINST: Judges Oda, Koroma, Vereshchetin; Judge ad hoc Ajibola;

(f) by fifteen votes to two,

Rejects the sixth preliminary objection;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc Mbaye;

AGAINST: Judge Koroma; Judge ad hoc Ajibola;

(g) by twelve votes to five,

Rejects the seventh preliminary objection;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Parra-Aranguren, Rezek; Judge ad hoc Mbaye;

AGAINST: Judges Oda, Koroma, Higgins, Kooijmans; Judge ad hoc Ajibola;

(2) by twelve votes to five,

Declares that the eighth preliminary objection does not have, in the circumstances of the case, an exclusively preliminary character;

IN FAVOUR: President Schwebel; Vice-President Weeramantry; Judges Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Parra-Aranguren, Rezek; Judge ad hoc Mbaye;

AGAINST: Judges Oda, Koroma, Higgins, Kooijmans; Judge ad hoc Ajibola;

(3) by fourteen votes to three,

Finds that, on the basis of Article 36, paragraph 2, of the Statute, it has jurisdiction to adjudicate upon the dispute;

IN FAVOUR: President Schwebel; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc Mbaye;

AGAINST: Vice-President Weeramantry; Judge Koroma; Judge ad hoc Ajibola;

(4) by fourteen votes to three,

Finds that the Application filed by the Republic of Cameroon on 29 March 1994, as amended by the Additional Application of 6 June 1994, is admissible.

IN FAVOUR: President Schwebel; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek; Judge ad hoc Mbaye;

AGAINST: Vice-President Weeramantry; Judge Koroma; Judge ad hoc Ajibola.

Judges Oda, Vereshchetin, Higgins, Parra-Aranguren and Kooijmans appended separate opinions to the Judgment, Vice-President Weeramantry, Judge Koroma and Judge ad hoc Ajibola appended dissenting opinions.

150. By an Order of 30 June 1998, the Court, having been informed of the views of the Parties, fixed 31 March 1999 as the time-limit for the filing of the Counter-Memorial of Nigeria.

8. Fisheries Jurisdiction (Spain v. Canada)

151. On 28 March 1995 the Kingdom of Spain filed in the Registry of the Court an Application instituting proceedings against Canada with respect to a dispute relating to the Canadian Coastal Fisheries Protection Act, as amended on 12 May 1994, and to the implementing regulations of that Act, as well as to certain measures taken on the basis of that legislation, more particularly the boarding on the high seas, on 9 March 1995, of a fishing boat, the Estai, sailing under the Spanish flag.

152. The Application indicated, inter alia, that by the amended Act "an attempt was made to impose on all persons on board foreign ships a broad prohibition on fishing in the NAFO Regulatory Area [NAFO — Northwest Atlantic Fisheries Organization], that is, on the high seas, outside Canada's exclusive economic zone"; that the Act "expressly permits (Article 8) the use of force against foreign fishing boats in the zones that Article 2.1 unambiguously terms the 'high seas'"; that the implementing regulations of 25 May 1994 provided, in particular, for "the use of force by fishery protection vessels against the foreign fishing boats covered by those rules ... which infringe their mandates in the zone of the high seas within the scope of those regulations"; and that

the implementing regulations of 3 March 1995 "expressly permit [...] such conduct as regards Spanish and Portuguese ships on the high seas".

153. The Application alleged the violation of various principles and norms of international law and stated that there was a dispute between the Kingdom of Spain and Canada which, going beyond the framework of fishing, seriously affected the very principle of the freedom of the high seas and, moreover, implied a very serious infringement of the sovereign rights of Spain.

154. As a basis of the Court's jurisdiction, the Applicant referred to the declarations of Spain and of Canada made in accordance with Article 36, paragraph 2, of the Statute of the Court.

155. In that regard, the Application specified that:

> "The exclusion of the jurisdiction of the Court in relation to disputes which may arise from management and conservation measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area and the enforcement of such measures (Declaration of Canada, para. 2 (d), introduced as recently as 10 May 1994, two days prior to the amendment of the Coastal Fisheries Protection Act), does not even partially affect the present dispute. Indeed, the Application of the Kingdom of Spain does not refer exactly to the disputes concerning those measures, but rather to their origin, to the Canadian legislation which constitutes their frame of reference. The Application of Spain directly attacks the title asserted to justify the Canadian measures and their actions to enforce them, a piece of legislation which, going a great deal further than the mere management and conservation of fishery resources, is in itself an internationally wrongful act of Canada, as it is contrary to the fundamental principles and norms of international law; a piece of legislation which for that reason does not fall exclusively within the jurisdiction of Canada either, according to its own Declaration (paragraph 2 (c) thereof). Moreover, only as from 3 March 1995 has an

attempt been made to extend that legislation, in a discriminatory manner, to ships flying the flags of Spain and Portugal, which has led to the serious offences against international law set forth above."

156. While expressly reserving the right to modify and extend the terms of the Application, as well as the grounds invoked, and the right to request the appropriate provisional measures, the Kingdom of Spain requested:

"(A) that the Court declare that the legislation of Canada, in so far as it claims to exercise a jurisdiction over ships flying a foreign flag on the high seas, outside the exclusive economic zone of Canada, is not opposable to the Kingdom of Spain;

(B) that the Court adjudge and declare that Canada is bound to refrain from any repetition of the complained of acts, and to offer to the Kingdom of Spain the reparation that is due, in the form of an indemnity the amount of which must cover all the damages and injuries occasioned; and

(C) that, consequently, the Court declare also that the boarding on the high seas, on 9 March 1995, of the ship Estai flying the flag of Spain and the measures of coercion and the exercise of jurisdiction over that ship and over its captain constitute a concrete violation of the aforementioned principles and norms of international law;"

157. By a letter dated 21 April 1995, the Ambassador of Canada to the Netherlands informed the Court that, in the view of his Government, the Court manifestly lacked jurisdiction to deal with the Application filed by Spain by reason of paragraph 2 (d) of the Declaration, dated 10 May 1994, whereby Canada accepted the compulsory jurisdiction of the Court.

158. Taking into account an agreement concerning the procedure reached between the Parties at a meeting with the President of the Court, held on 27 April 1995, the President, by an Order of 2 May 1995, decided that the written proceedings should first be addressed to the question of the jurisdiction of the Court to entertain the dispute and fixed 29 September 1995 as the time-limit for the filing of the Memorial of the Kingdom of Spain and 29 February 1996 for the filing of the Counter-Memorial of Canada. The Memorial and Counter-Memorial were filed within the prescribed time-limits.

159. Spain chose Mr. Santiago Torres-Bernárdez and Canada Mr. Marc Lalonde to sit as judges ad hoc.

160. The Spanish Government subsequently expressed its wish to be authorized to file a Reply; the Canadian Government opposed this. By an Order of 8 May 1996, (I.C.J. Reports 1996, p. 58) the Court, considering that it was "sufficiently informed, at this stage, of the contentions of fact and law on which the Parties rely with respect to its jurisdiction in the case and whereas the presentation by them, of other written pleadings on that question therefore does not appear necessary", decided by fifteen votes to two, not to authorize the filing of a Reply by the Applicant and a Rejoinder by the Respondent on the question of jurisdiction.

161. Judge Vereshchetin and Judge ad hoc Torres Bernárdez voted against; the latter (ibid., p. 61) appended a dissenting opinion to the Order.

162. Public sittings to hear the oral arguments of the Parties on the question of the jurisdiction of the Court were held between 9 and 17 June 1998.

163. At the time of preparation of this Report, the Court is deliberating on its Judgment.

9. Kasikili/Sedudu Island (Botswana/Namibia)

164. On 29 May 1996 the Government of the Republic of Botswana and the Government of the Republic of Namibia notified jointly to the Registrar of the Court a Special Agreement between the two States signed at Gaborone on 15 February 1996 and which came into force on 15 May 1996, for the submission to the Court of the dispute existing between them concerning the boundary around Kasikili/Sedudu Island and the legal status of that island.

165. The Special Agreement refers to a Treaty between Great Britain and Germany respecting the spheres of influence of the two countries, signed on 1 July 1890, and to the appointment, on 24 May 1992, of a Joint Team of Technical Experts "to determine the boundary between Namibia and Botswana around Kasikili/Sedudu Island" on the basis of that Treaty and of the applicable principles of international law. Unable to reach a conclusion on the question the Joint Team of Technical Experts recommended "recourse to the peaceful settlement of the dispute on the basis of the applicable rules and principles of international law". At the Summit Meeting held in Harare, Zimbabwe, on 15 February 1995, President Masire of Botswana and President Nujoma of Namibia agreed "to submit the dispute to the International Court of Justice for a final and binding determination".

166. Under the terms of the Special Agreement, the Parties ask the Court to

> "determine, on the basis of the Anglo-Germany Treaty of 1st July 1890 and the rules and principles of international law, the boundary between Namibia and Botswana around Kasikili/Sedudu Island and the legal status of the island."

167. By an Order of 24 June 1996 (I.C.J. Reports 1996, p. 63), the Court fixed 28 February and 28 November 1997 respectively as the time-limits for the filing by each of the Parties of a Memorial and a Counter-Memorial. A Memorial and a Counter-Memorial were filed by each of the Parties within the prescribed time-limits.

168. In a joint letter dated 16 February 1998 the Parties requested further written pleadings pursuant to Article II, paragraph 2 (c) of the Special Agreement, which provides, in addition to the Memorials and Counter-Memorials, for "such other pleadings as may be approved by the Court at the request of either of the Parties, or as may be directed by the Court".

169. By an Order of 27 February 1998, the Court, taking into account the agreement between the Parties, fixed 27 November 1998 as the time-limit for the filing of a Reply by each of the Parties.

10. Vienna Convention on Consular Relations (Paraguay v. United States of America)

170. On 3 April 1998 the Republic of Paraguay filed in the Registry of the Court an Application instituting proceedings against the United States of America in a dispute concerning alleged violations of the Vienna Convention on Consular Relations of 24 April 1963. Paraguay based the jurisdiction of the Court on Article 36, paragraph 1 of the Court's Statute and on Article I of the Optional Protocol concerning the Compulsory Settlement of Disputes which accompanies the Vienna Convention on Consular Relations, and which provides that "disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice".

171. In the Application it was stated that in 1992 the authorities of the Commonwealth of Virginia had arrested a Paraguayan national, Mr. Angel Francisco Breard; that he had been charged, tried, convicted of culpable homicide and sentenced to death by a Virginia court (the Circuit Court of Arlington County) in 1993, without having been informed, as is required under Article 36, subparagraph 1 (b), of the Vienna Convention, of his rights under that provision; it was specified that among these rights were the right to request that the relevant consular office of the State of which he was a national be advised of his arrest and detention, and the right to communicate with

that office; it was further alleged that the authorities of the Commonwealth of Virginia also had not advised the Paraguayan consular officers of Mr. Breard's detention, and that those officers had only been able to render assistance to him from 1996, when the Paraguayan Government had learnt by its own means that Mr. Breard had been imprisoned in the United States;

172. Paraguay further stated that Mr. Breard's subsequent petitions before federal courts in order to seek a writ of habeas corpus had failed, the federal court of first instance having, on the basis of the doctrine of "procedural default", denied him the right to invoke the Vienna Convention for the first time before that court, and the intermediate federal appellate court having confirmed that decision; that consequently, the Virginia court that sentenced Mr. Breard to the death penalty had set an execution date of 14 April 1998; that Mr. Breard, having exhausted all means of legal recourse available to him as of right, had petitioned the United States Supreme Court for a writ of certiorari, requesting it to exercise its discretionary power to review the decision given by the lower federal courts and to grant a stay of his execution pending that review, and that, while this request was still pending before the Supreme Court, it was however rare for that Court to accede to such requests; Paraguay stated, moreover, that it brought proceedings itself before the federal courts of the United States as early as 1996, with a view to obtaining the annulment of the proceedings initiated against Mr. Breard, but both the federal court of first instance and the federal appellate court held that they had no jurisdiction in the case because it was barred by a doctrine conferring "sovereign immunity" on federated states; that Paraguay had also filed a petition for a writ of certiorari in the Supreme Court, which was also still pending; and that Paraguay had furthermore engaged in diplomatic efforts with the Government of the United States and sought the good offices of the Department of State;

173. Paraguay maintained that by violating its obligations under Article 36, subparagraph 1 (b), of the Vienna Convention, the United States had prevented Paraguay from exercising the consular functions provided for in Articles 5 and 36 of the Convention and specifically for ensuring the protection of its interests and of those of its nationals in the United

States; Paraguay stated that it had not been able to contact Mr. Breard nor to offer him the necessary assistance, and that accordingly Mr. Breard had "made a number of objectively unreasonable decisions during the criminal proceedings against him, which were conducted without translation"; and had not comprehended "the fundamental differences between the criminal justice systems of the United States and Paraguay"; Paraguay concluded from this that it was entitled to restitutio in integrum, that is to say "the re-establishment of the situation that existed before the United States failed to provide the notifications . . . required by the Convention";

174. Paraguay requested the Court to adjudge and declare as follows:

"(1) that the United States, in arresting, detaining, trying, convicting, and sentencing Angel Francisco Breard, as described in the preceding statement of facts, violated its international legal obligations to Paraguay, in its own right and in the exercise of its right of diplomatic protection of its national, as provided by Articles 5 and 36 of the Vienna Convention;

(2) that Paraguay is therefore entitled to restitutio in integrum;

(3) that the United States is under an international legal obligation not to apply to the doctrine of 'procedural default', or any other doctrine of its internal law, so as to preclude the exercise of the rights accorded under Article 36 of the Vienna Convention; and

(4) that the United States is under an international legal obligation to carry out in conformity with the foregoing international legal obligations any future detention of or criminal proceedings against Angel Francisco Breard or any other Paraguayan national in its territory, whether by a constituent, legislative, executive, judicial or other power, whether that power holds a superior or a

subordinate position in the organization of the United States, and whether that power's functions are of an international or internal character,

and that, pursuant to the foregoing international legal obligations,

(1) any criminal liability imposed on Angel Francisco Breard in violation of international legal obligations is void, and should be recognized as void by the legal authorities of the United States;

(2) the United States should restore the status quo ante, that is, re-establish the situation that existed before the detention of, proceedings against, and conviction and sentencing of Paraguay's national in violation of the United States' international legal obligations took place; and

(3) the United States should provide Paraguay a guarantee of the non-repetition of the illegal acts."

175. On the same day, 3 April 1998, Paraguay "in view of the extreme gravity and immediacy of the threat that the authorities . . . will execute a Paraguayan citizen", submitted an urgent request for the indication of provisional measures, asking that, pending final judgment in the case, the Court indicate:

"(a) That the Government of the United States take the measures necessary to ensure that Mr. Breard not be executed pending the disposition of this case;

(b) That the Government of the United States report to the Court the actions it has taken in pursuance of subparagraph (a) immediately above and the results of those actions; and

(c) That the Government of the United States ensure that no action is taken that might prejudice the rights of the Republic of Paraguay with respect to any decision this Court may render on the merits of the case."

176. By identical letters dated 3 April 1998, the Vice-President of the Court, Acting President, addressed both Parties in the following terms:

"Exercising the functions of the presidency in terms of Articles 13 and 32 of the Rules of Court, and acting in conformity with Article 74, paragraph 4, of the said Rules, I hereby draw the attention of both Parties to the need to act in such a way as to enable any Order the Court will make on the request for provisional measures to have its appropriate effects";

177. At a meeting held the same day with the representatives of both Parties, he advised them that the Court would hold public hearings on 7 April 1998 at 10 a.m., in order to afford the Parties the opportunity of presenting their observations on the request for provisional measures;

178. After those hearings had been held, the Vice-President of the Court, Acting President, at a public sitting of 9 April 1998, read the Order on the request for provisional measures made by Paraguay, the operative paragraph of which reads as follows:

"For these reasons,

THE COURT

Unanimously,

1. Indicates the following provisional measures:

The United States should take all measures at its disposal to ensure that Angel Francisco Breard is not executed pending the final decision in these proceedings, and should inform the Court of all the measures which it has taken in implementation of this Order;

II. Decides, that, until the Court has given its final decision, it shall remain seised of the matters which form the subject-matter of this Order."

President Schwebel and Judges Oda and Koroma appended declarations to the Order of the Court.

179. By an Order of the same day, 9 April 1998, the Vice-President of the Court, Acting President, taking into account the Court's Order on provisional measures, in which it is stated that "it is appropriate that the Court, with the co-operation of the Parties, ensure that any decision on the merits be reached with all possible expedition"and a subsequent agreement between the Parties, fixed 9 June 1998 as the time-limit for the Memorial of Paraguay and 9 September 1998 for the Counter-Memorial of the United States.

180. In response to a request from Paraguay made in the light of the execution of Mr. Breard, and taking into account an agreement on extension of time-limits reached by the Parties, the Vice-President, Acting President, by an Order of 8 June 1998, extended the above-mentioned time-limits to 9 October 1998 and 9 April 1999 respectively.

IV. THE ROLE OF THE COURT

181. At the 36th meeting of the fifty-second session of the General Assembly, held on 27 October 1997, at which the Assembly took note of the report of the Court for the period from 1 August 1996 to 31 July 1997, the President of the Court, Judge Stephen M. Schwebel, addressed the General Assembly on the role and functioning of the Court (A/52/PV.36). In his address, the President referred to the fact that the Court had been examining the consequences of its increased workload and had consequently adopted certain measures and practices to accelerate its work.

182. At the 72nd meeting of its fifty-second session, held on 15 December 1997, the General Assembly adopted resolution 52/161, paragraph 4 of which reads:

> "4. Invites Member States, the States parties to the Statute of the International Court of Justice, and the International Court of Justice if it so desires, to present, before the fifty-third session of the General Assembly, their comments and observations on the consequences that the increase in the volume of cases before the Court has on its operation, on the understanding that whatever action may be taken as a result of this invitation will have no implications for any changes in the Charter of the United Nations or the Statute of the International Court of Justice;"

183. The Court's response to the General Assembly is attached to this Report (Annex I). The text of a Note, for the information of States parties in cases before the Court, is also attached (Annex II).

V. VISITS

A. Visit by the Deputy Secretary-General of the United Nations

184. On 22 May 1998, the Deputy Secretary-General of the United Nations, H. E. Miss Louise Fréchette, made an official visit to the Court. She was received by the Members of the Court and held private exchanges with them. President Schwebel gave a luncheon in her honour.

B. Visits of Heads of State

185. On 30 October 1997 H. E. Mr. Jorge Sampaio, the President of the Portuguese Republic, was received by the Court in the Great Hall of Justice at the Peace Palace, the seat of the Court. At a sitting attended by the diplomatic corps, representatives of the Dutch Government and Parliament, as well as other authorities of the host State, members of the Permanent Court of Arbitration, the International Criminal Tribunal for the Former Yugoslavia, the Iran-US Claims Tribunal, the Organization for the Prohibition of Chemical Weapons, The Hague Conference on Private International Law and other institutions, the Vice-President of the Court, Judge Weeramantry, made a welcoming speech, in which he referred inter alia to Portugal's historic role on the international stage and to its great contribution to the development of modern international law and of international dispute resolution. In his reply the President of the Portuguese Republic drew attention to the development of universalism in the fields of international organization and international dispute settlement, while regretting that the jurisdiction of the Court had not been extended in the course of the years either rationae personae or rationae materiae.

186. On 2 December 1997 the President of Ukraine, Mr. Leonid Kuchma, was received by the Court. In the Small Hall of Justice the President of the Court, Judge Schwebel, praised in his welcome speech the recent conclusion of a treaty between Ukraine and one of its neighbouring

States which, he said, represented an "important contribution to the jurisdiction of the Court". President Schwebel further confirmed that "the Court, as always, stands ready to serve and uphold the role and the rule of international law in the peaceful resolution of disputes". President Kuchma, in his response, expressed satisfaction at visiting "the world temple of justice". Paying tribute to the Court's work since its creation in 1946, he referred to the agreements concluded by his country with Romania and the Russian Federation as an illustration of Ukraine's desire to achieve neighbourly relations.

187. On 5 March 1998, the President of Romania, H.E. Mr. Emil Constantinescu, was received by the Court. In the Red Room adjoining the Great Hall of Justice, the President of the Court praised in his welcome address the recent conclusion between Romania and a neighbouring State of a treaty containing a provision for the jurisdiction of the Court. The President of Romania, in his response, reiterated the "clear and firm commitment of Romania to support the activity of the Court" and to work to promote good relations between States. In that connection, he stressed that his country, by concluding bilateral treaties with Ukraine and Hungary and by participating in the creation of Euro-regions, had become a "factor of regional stability in an area where there is still a danger of fresh conflicts arising".

188. On 16 March 1998, the President of Venezuela, H. E. Dr. Rafael Caldera, was received by the Court in the Great Hall of Justice. It was the second time that President Caldera visited the Peace Palace. In 1979, he came to unveil a bronze bust of the Venezuelan lawyer, philosopher and poet Andrés Bello, a gift from his country. At a sitting attended by the diplomatic corps, representatives of the Dutch Government and other authorities of the host State, of the Permanent Court of Arbitration, the International Criminal Tribunal for the Former Yugoslavia and other international institutions located in The Hague, the President of the Court, in his welcome speech, commended President Caldera for his long-standing contribution to social justice in the national and international fields, as well as Venezuela, and its founder, Simon Bolivar, for their initiatives with regard to compulsory international arbitration. President Caldera, in his reply drew attention to the

heavy task of integrating the idea of social justice in the body of international law and stressed the confidence his country had in this respect in the Court and in law and justice.

VI. LECTURES ON THE WORK OF THE COURT

189. Many talks and lectures on the Court, both at the seat of the Court and elsewhere, were given by the President, Members of the Court, the Registrar and officials of the Court in order to improve public understanding of the judicial settlement of international disputes, the jurisdiction of the Court and its function in contentious and advisory cases. During the period under review the Court received a great number of groups including diplomats, scholars and academics, judges and representatives of judicial authorities, lawyers and legal professionals as well as others, amounting to some 3,000 persons in all.

VII. COMMITTEES OF THE COURT

190. The committees constituted by the Court to facilitate the performance of its administrative tasks, which met as required during the period under review, are composed as follows:

(a) The Budgetary and Administrative Committee: the President, the Vice-President and Judges Bedjaoui, Guillaume, Shi, Fleischhauer, Vereshchetin and Kooijmans.

(b) The Committee on Relations: The Vice-President and Judges Herczegh and Parra-Aranguren.

(c) The Library Committee: Judges Shi, Koroma, Higgins, Kooijmans and Rezek.

191. The Rules Committee, constituted by the Court in 1979 as a standing body, is composed of Judges Oda, Guillaume, Fleischhauer, Koroma, Higgins and Rezek.

VIII. PUBLICATIONS AND DOCUMENTS OF THE COURT

192. The publications of the Court are distributed to the Governments of all States entitled to appear before the Court, and to the major law libraries of the world. The sale of those publications is organized by the Sales Sections of the United Nations Secretariat, which are in contact with specialized booksellers and distributors throughout the world. A catalogue published in English (latest edition: December 1995) and French (latest edition: 1994) is distributed free of charge. Addenda in both languages, regularly updated, may be obtained from the Registry. A new edition in the two languages is under preparation.

193. The publications of the Court consist of several series, three of which are published annually: Reports of Judgments, Advisory Opinions and Orders (published in separate fascicles and as a bound volume), a Bibliography of works and documents relating to the Court, and a Yearbook (in the French version: Annuaire). In the first series, the latest bound volume published is I.C.J. Reports 1995. I.C.J. Reports 1996 will appear after the publication of the Index 1996, which is under preparation. Due to delays occasioned essentially by the present budgetary restrictions, notably with regard to translations, it has not been possible as yet to publish some fascicles of subsequent years. For 1997 the Judgment of 25 September in the case concerning Gabčikovo-Nagymaros Project (Hungary/Slovakia) and the Order of 17 December on Counter-Claims in the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia) have not been published. For 1998 only two Orders have been published. Publication of the three Judgments on preliminary objections in the cases concerning Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom), Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America), and concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), as well as of a number of Orders, will have to be postponed till the end of year. The

Court further publishes the instruments instituting proceedings in a case before it: an Application instituting proceedings, a Special Agreement or a Request for an Advisory Opinion. The latest of these publications is the Application by which Paraguay instituted proceedings against the United States of America in a dispute concerning the Vienna Convention on Consular Relations.

194. Before the termination of a case, the Court may, pursuant to Article 53 of the Rules of Court, and after ascertaining the views of the parties, make the pleadings and documents available on request to the Government of any State entitled to appear before the Court. The Court may also, having ascertained the views of the parties, make copies of the pleadings accessible to the public on or after the opening of the oral proceedings. The documentation of each case is published by the Court after the end of the proceedings, under the title Pleadings, Oral Arguments, Documents. In that series, several volumes are in preparation, regarding the cases concerning the Frontier Dispute (Burkina Faso/Republic of Mali), Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), as well as the case concerning Border and Transborder Armed Actions (Nicaragua v. Honduras), in which the first of two planned volumes has been published during the period under review. The publication of the Pleadings series is in grave arrears, because of shortage of staff.

195. In the series Acts and Documents concerning the Organization of the Court, the Court also publishes the instruments governing its functioning and practice. The latest edition (No. 5) was published in 1989 and is regularly reprinted (latest reprint: 1996).

196. An offprint of the Rules of Court is available in English and French. Unofficial Arabic, Chinese, German, Russian and Spanish translations of the Rules are also available.

197. The Court distributes press communiqués, background notes and a handbook in order to keep lawyers, university teachers and students, government officials, the press and the general public informed about its work, functions and jurisdiction. The fourth edition of the handbook,

published on the occasion of the Court's 50th Anniversary, appeared in May and July 1997 in French and English respectively. Arabic, Chinese, Russian and Spanish translations of the handbook published on the occasion of the 40th Anniversary of the Court were issued in 1990. Copies of those editions of the handbook in the above-mentioned languages, as well as of a German version of the first edition, are still available.

198. In order to increase and expedite the availability of ICJ documents and reduce communication costs the Court had, as indicated in the previous Report, decided to develop a website. That website was launched on 25 September 1997 both in English and French. At the time of preparation of this report, it featured the Court's latest Judgments and Orders (which were posted on the day they were delivered), most of the relevant documents in pending cases (Application or Special Agreement, written and oral pleadings, the Court's decisions, press releases), a list of cases before the ICJ, some basic documents (UN Charter and Statute of the Court), general information on the Court's history and proceedings, and the biographies of the judges. Additional documents (e.g. summaries of past decisions, catalogue of publications) will be made available as of the fall of 1998. The website can be visited at the following address: http://www.icj-cij.org.

199. In addition to the website and in order to offer a better service to persons and institutions interested in its work, the Court has introduced in June 1998 three new electronic mail (Email) addresses to which comments and inquiries can be sent. They read as follows: webmaster@icj-cij.org(technical comments), information@icj-cij.org(requests for information and for documents) and mail@icj-cij.org(other requests and comments). The Court moreover intends to send press releases by Email as of the fall of 1998.

200. More comprehensive information on the work of the Court during the period under review will be found in the I.C.J. Yearbook 1997-1998, to be issued in due course.

Stephen M. SCHWEBEL,
President of the International
Court of Justice.

The Hague, 10 August 1998

Annex I

RESPONSE OF THE INTERNATIONAL COURT OF JUSTICE TO GENERAL ASSEMBLY RESOLUTION 52/161 OF 15 DECEMBER 1997

The International Court of Justice was invited to submit to the General Assembly by 30 June 1998 its "comments and observations on the consequences that the increase in the volume of cases before the Court has on its operation, on the understanding that whatever action may be taken as a result of this invitation will have no implications for any changes in the Charter of the United Nations or the Statute of the International Court of Justice" (General Assembly resolution 52/161, paragraph 4).

The Assembly will find below the observations it invited. After explaining the current workload of the Court, this Report examines the effects of the increase in the volume of its work and the budgetary difficulties that it faces. It then analyses the responses of the Court to this double challenge and its needs that have yet to be met.

THE COURT AND ITS WORKLOAD

The International Court of Justice is one of the six principal organs of the United Nations and its principal judicial organ, a body whose independence and autonomy are recognized by the Charter of the United Nations and the Statute of the Court, which itself is an integral part of the Charter. The Court must at all times be able to exercise the functions entrusted to it if the terms and intent of the Charter are to be implemented.

The entire raison d'être of the Court is to deal with the cases submitted to it by States Members of the United Nations and parties to the Statute and with the requests for advisory opinions made by United Nations organs or specialized agencies. These statutory duties of the Court mean that it does not have programmes which may be cut or expanded at will, although such possibilities may exist for certain other United Nations organs.

Since its establishment in 1946, the Court has had to deal with 76 disputes between States and 22 requests for an advisory opinion. Of those, 28 of the contentious cases were brought before the Court since the 1980s. Whereas in the seventies the Court characteristically had one or two cases at a time on its docket, from the early eighties there has been a marked increase in recourse to the Court. Throughout the 1990s the figures have been large, standing at 9 in 1990, 12 in 1991, 13 in the years 1992-1995, 12 in 1996, 9 in 1997. Ten cases are currently pending.

In reality, there is a still larger number of matters awaiting the Court's decision. This is because the jurisdiction of the Court being based on consent, there are often "cases within cases" to determine questions of jurisdiction and admissibility when this is contested by one of the parties. Such preliminary issues are being or have been raised in the current cases of Land and Maritime Boundary between Cameroon and Nigeria; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia Herzegovina v. Yugoslavia); Maritime Delimitation and Territorial Questions between Qatar and Bahrain; Oil Platforms (Iran v. United States); Fisheries Jurisdiction (Spain v. Canada); Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libya v. United States of America; Libya v. United Kingdom). Just as in proceedings on the merits, these preliminary questions have to be dealt with by multiple rounds of written pleadings, oral arguments, deliberations and judgments, thus considerably multiplying further the "real" number of cases on the Court's docket at any given time. In certain recent cases the respondent State has not only replied on the merits but has also brought counter-claims (Oil Platforms; Genocide). The admissibility

of the counter-claims and the subsequent exchanges of pleadings that they engender have given rise to yet further "cases within cases" upon the Court's listed docket.

Furthermore, it is not uncommon for the Court suddenly to receive a request for provisional measures. Such a request takes priority over everything else and entails written pleadings, hearings, deliberations and an Order issued by the Court. During the last 2½ years there have been three such cases on provisional measures.

It must be appreciated that the Court deals with cases involving sovereign States, bearing on issues of great importance and complexity, in which the States have mobilized their full resources to submit heavy written pleadings and present detailed oral argument. In order to cope with such cases, the practice has been that after reviewing the written and oral pleadings each judge of the Court prepares a written Note — in fact a detailed analysis of the legal issues and the judicial conclusions that follow. Each Judge then studies the Notes of his or her colleagues before engaging in deliberations on the various complex issues. At the end of these deliberations — which may last over several days — a drafting committee is selected to prepare the Court's Judgment or Opinion. All judges then prepare comments and amendments to the draft Judgment or Opinion, which is further refined by the drafting committee and put again before the Court, before being adopted in its final form. The fashioning of the Court's decisions accordingly brings to hear the contributions of every Member of the Court, as befits a court of universal composition and mission.

The evidence is clear, both from the history of the Permanent Court of International Justice and of this Court, that judicial recourse is resorted to more frequently in times of détente rather than of tension. The increasing tendency to bring cases to the Court by Special Agreement is testimony to this. Further, more and more multilateral conventions include reference clauses to the International Court for the settlement of disputes. Moreover, 13 more States today accept the "Optional Clause" under Article 36, paragraph 2, of the Statute, allowing cases to be brought against them by States accepting the same obligation, than was the case in the early eighties. There is thus

every reason to suppose that the rise since this period in the number of cases coming to the Court represents a fundamental change, which is likely to endure and perhaps expand.

THE EFFECTS OF THIS INCREASED WORKLOAD

This increase in the Court's workload has had multiple effects, which may be briefly summarized. The essential backdrop is that the Court receives a modest annual budget of less than 11 million dollars — a sum not much larger, in real terms, than when the Court had little work in the 1960s and 1970s. The Court was granted some expansion in the size of the permanent staff of the Registry, from the beginning of the 1980s until the early 1990s. The Court is grateful to the General Assembly for that, which had largely to be directed to the legal staff and to providing some secretaries for the Judges.

However, the growth in the Court's work has been such that the increase has turned out to be insufficient.

Moreover, the problems of the Court were compounded in 1996 when it lost posts which have not been restored, and sustained a significant budgetary cut. Greater demands are being made on the small Registry of the Court (57 staff in its totality, from the Registrar himself to 2 messengers) for its research and legal, library and documentary services, and especially for translation and secretarial services. The workload of the Members of the Court and of the staff, in real terms, has thus relentlessly increased. Indeed, the obligations of the Court to fulfil its functions under the Charter and Statute has meant that the Registry is sometimes being asked to perform tasks that are quite simply physically impossible under the present staffing and budgetary régime.

By the terms of Article 39 of the Statute, the official languages of the Court are French and English. Whether in a contentious case or advisory proceedings, all the essential elements must be available in the two languages: acts instituting proceedings, the written pleadings (Memorial, Counter-Memorial, Reply and Rejoinder, including their often extensive annexes or written statements in advisory proceedings), internal distributions of the Court linked to the cases, rounds of oral proceedings, press communiqués, judges' Notes, Orders, the Judgment or Advisory Opinion, separate and/or dissenting opinions and declarations. From 1 January 1994 until 15 May 1998 more than 8½ million words in this category have been translated.

It is also necessary to translate documents less immediately connected with particular cases, but without which the Court cannot function — office circulars, press communiqués about matters other than specific cases, records of the meetings of the Court. In the same period more than half a million words of this kind have been translated.

The Court translates no more than it needs to. In 1996 and 1997 decisions were taken whereby **in extenso** records would no longer be prepared for the internal meetings of the Court, as well as those of the Administrative and Budgetary Committee and of the Rules Committee. Usually only a short resumé of the matters decided would henceforth be recorded, and translated.

The pace of the Court's work essentially depends upon the speed at which reliable translations can be produced and necessary revisions put in place. The productivity of translation staff in respect of the total of 9 million words translated between 1994 and 1998 is significantly higher than the required United Nations rate. Yet the task remains overwhelming and the financial implications deeply disturbing. Parties produce ever-longer pleadings and annexes; the Court has more cases; but it is required to operate on a diminished and wholly inadequate base of resource. The average length of a procedure before the Court has gone from two and a half to four years. At certain moments in the Court's budgetary cycle an extraordinary tension exists between the need to preserve an operational balance of the remaining funds for the biennium and the need to proceed with

translation so that the Court can continue with its judicial work. The maintenance of the Court's work is thus put in serious jeopardy.

The greater workload of the Court has also meant that for judges and Registry professionals, secretarial support, already modest, has become quite inadequate.

In its 1996-1997 budget submission, the Court proposed the conversion of seven temporary posts to permanent posts, to obtain more secretaries (though still not a secretary for each judge), a finance assistant for the installation, maintenance and management of computer systems, and translators and clerk-typists. At the end of the budgetary process, the decision taken was only to allocate three temporary posts. As a consequence, the Registry in 1996-1997 was required to function with only four posts in Language Services and four posts in the typing pool.

The increased workload of the Court has meant that the Court is also understaffed so far as its legal staff is concerned. As of 1998 it has a staff of six officers to cover all its legal and diplomatic needs. None serve as clerks to the judges.

Faced with these realities, in its 1998-1999 budget submission, the Court again proposed the reinstatement of the four lost temporary posts (two translators and two typists). These requests fell far short of what the Court actually needs to fulfil its functions under the Charter and Statute. The translation posts were not approved, though additional funds were added to the budget for temporary assistance for meetings.

The Registry is using all means to deal with these problems, including attempting to recruit translators under one-year fixed term contracts and utilizing external translators outside the premises. The outsourcing of translation nonetheless entails administrative burdens, for which staff support is lacking.

The Court has appreciated the unfreezing, in the last budget allocation, of three previously frozen posts. This has allowed the Court to fill the post of Head of Language Services and to appoint an Indexer and an Associate Information Officer. The burden upon the Information Services has been particularly acute, as there is not even a secretary or administrative assistant. This post is urgently needed to allow the two professional officers to use their time more efficiently and appropriately. The Court has but one telephone for the use of the press. It requires a properly equipped press room.

It must also be mentioned that the Court's compliance with the mandated reduction of $885,600 in its 1996-1997 budget has meant that, in effect, its budget for external printing purposes was cut by over 50 per cent. Publication of the pleadings of cases has since 1983 been sporadic; and there has been no publication of pleadings received since 1990. In spite of the effort of the Court to maintain a good production rate, the backlog grows to huge proportions. If the work of the Court is not widely accessible, its contribution to the prevention of conflicts and the peaceful settlement of disputes cannot be attained.

The Court has set up a new Computerization Department, composed of two persons, drawing upon personnel of the Finance Department. This has left this latter department very hard pressed.

THE RESPONSE OF THE COURT TO THE DOUBLE CHALLENGE OF AN INCREASED WORKLOAD AND AN INSUFFICIENCY OF RESOURCES

The Court has responded with determination to operate an increased workload with maximum efficiency. This drive for efficiency comprises several elements.

Rationalization of the Registry

In order to come to terms with a situation in which the workload of the Court has increased and the means at its disposal has decreased, the Court created a sub-committee to examine the work

methods in the Registry and to make proposals for their rationalization and improvement. The Sub-Committee on Rationalization has intensively reviewed all component parts of the Registry and, in November 1997, presented a report containing observations and recommendations on the administration of the Registry as a whole, as well as observations and recommendations regarding the individual divisions of the Registry. The recommendations concerned work methods, management questions and the organizational set-up of the Registry. The Sub-Committee in particular recommended some measures of decentralization and reorganization be implemented in the Registry. The Court accepted, in December 1997, virtually all recommendations of the Sub-Committee on Rationalization and these decisions of the Court are being implemented. They have been passed to the Advisory Committee for Administrative and Budgetary Questions (ACABQ).

Information Technology

In order to maximize its efficiency and in compliance with the recommendations of the General Assembly the Court has taken full advantage, within its budgetary means, of electronic techniques.

Since 1993 there has been established at the Court an internal computer network which enables the Members of the Court and its staff to use advanced software programmes, send internal e-mail and share documents and data bases. This has resulted in increased efficiency and in cost savings. In particular, lawyers and translators can, through means of the indexing software, research a vast array of documentation to find legal terminology, precedents, citations and quotations. In turn, the use of the indexing software considerably facilitates efficient translation of documents. The Court has also sought to decrease the typing workload by encouraging parties to submit their documents in digital format. Such digital documents are also included in the Court's indexing

database. If funds were to be provided to computerize the Court's case-law and archives, the system would be far more effective still.

More recently, the Court has established a very successful website on the Internet as well as mirror sites in various universities. This immediately well used and popular facility not only has raised the Court's profile but also has transformed the way the Court communicates its Orders, Opinions and Judgments. It is no longer necessary so often to distribute pre-publication documents of this category by mail to Foreign Offices, Legal Advisers, International Organizations, embassies and academics; these users turn routinely to the Court's website to follow its work and to draw down whatever documentation they require.

The Court's website contains, as well as fundamental constitutional documents, Judgments and other legal documents issued, as from the time of the establishment of the site along with the written and oral pleadings of the parties. However, because of the Court's very limited resources, it has not been possible, as noted above, to scan past Orders, Judgments and Opinions from the years 1946-1997, though such data is important both to States deciding whether to submit a dispute to the Court and to those currently engaged in litigation.

Furthermore, the continuous development and expansion of the website in its coverage of all contemporary material is essentially being carried out by one Registry staff member, already burdened with many other functions. Assistance is urgently needed. What can be achieved with such a technical post would still represent a considerable net saving for the Court, both directly and in terms of increased efficiency of operations.

The development of an e-mail facility in the Registry has also meant that translators can submit translations for review from any locality in the world (while confidentiality remains assured), thus saving costs on travel to the Court that was previously necessary. The travel element in the

budget for temporary assistance in translating, interpreting and typing has now become more modest.

An internal website — an intranet — is also under development. This will contain not only all the documents available on the Internet site but also other centralized documents and data bases intended solely for internal use within the Court.

This will enhance operational efficiency still further.

Streamlined Work Procedures

The Court also charged its Rules Committee with developing proposals to maximize efficiency. It was asked particularly to address the growing gap between the ending of the written phase of proceedings and the start of the oral phase — a gap caused by the backlog the Court has to work through. As a result the Court has adopted an important series of measures, reported in summary by President Schwebel in his address to the General Assembly on 27 October 1997. The Court has also identified ways in which States appearing before it could assist in the expeditious disposal of the Court's work. To that end, a Note will be given to the Agents representing the Parties to new cases at their first meeting with the Registrar. The measures concerning the Court itself, and those concerning the Parties, together with the Note on the latter, are the subject of Press Communiqué 98/14 of 6 April 1998.

Measures applying particularly to the Court

1. It has been the longstanding practice for each judge, upon the conclusion of the oral proceedings of a case, to prepare a written Note analysing the key issues in the case. These Notes are translated and circulated for study before the judges meet to deliberate on a case. The Court has now determined that it may proceed without written Notes where it considers

it necessary, in suitable cases concerning preliminary phases of the proceedings on the merits (e.g. objections to the jurisdiction of the Court or the admissibility of an Application). This is already the practice, because of the urgency in the case of requests for interim measures of protection. This departure will be on an experimental basis. The traditional practice regarding the preparation of written Notes will be maintained in phases of cases in which the Court is to decide on the merits.

2. When the Court has to adjudicate on two cases concerning its jurisdiction, it will be able to hear them "back-to-back" (that is to say, in immediate succession), so that work may then proceed on them concurrently. This innovation will be undertaken on an experimental basis, where there are appropriate cases and a pressing need to proceed rapidly.

3. The Court confirmed its recent practice of trying to give the Parties notice of its intended schedule for the next three cases, believing that such "forward planning" assists both States and their counsel, and the Court. This planning may allow a case to be brought on with less difficulty, if the preceding one has been withdrawn.

Measures applying particularly to the Parties

These measures aim to reduce the length of both the written and oral proceedings, as well as the time that elapses between the end of the written proceedings and the opening of hearings. To that end, a Note will be given to the agents representing the Parties to new cases at their first meeting with the Registrar.

1. In cases submitted by two States before the Court by mutual consent (Special Agreement), the Court will permit written pleadings to be filed consecutively by the Parties, and not simultaneously as provided in principle by the Rules of Court. Such a procedure could, in that type of case, moderate the number of exchanges of written pleadings.

2. With regard to the written proceedings in general, the Court has asked the Parties to see to it that the content of memorials is clear and that the annexes are more strictly selected. The Parties are also asked to supply all or part of any available translations of the written pleadings.

3. The Court drew the attention of the Parties to the succinctness required of the hearings, especially when dealing with preliminary phases of the proceedings on the merits.

A text of the Note to be given to the parties is appended.

These revised working methods are already in operation.

The Court is working at full stretch, and with longer working hours for the judges and Registry, and assiduous attention to maximizing efficient use of the resources which have been made available to us. The manner in which the Court was able to deal with the urgent application from Paraguay in April this year is testimony to this. The Application was received on 3 April; by 9 April the Court had met, heard legal argument, deliberated and handed down its Order (which was immediately available in print and upon the Court's website).

WHAT THE COURT NEEDS

Since the beginning of the 1980s the International Court of Justice has been struggling to deal with a very heavy docket of cases with a relatively modest increase in resources. The initial increase in resources in those years has been prejudiced by the later cuts which have been imposed

on the Court. And the modest budget allotted to the Court is a minute and diminishing proportion of the United Nations's budget.

The Court has throughout this period been sensitive to the budgetary problems being faced by the United Nations and its budgetary requests have accordingly been moderate, reflecting great self-restraint even in the face of real difficulties. The Court has tried, in significant measure, to address the problems associated with the increased workload by imposing upon itself longer working hours and more rigorous working conditions. It has also tried to cope with the increased workload by taking every opportunity to improve its efficiency. The introduction of intranet and internet facilities, the use of electronic methods, the increasing professionalism of its publicity, the revision of its work methods, the suggestions made in turn to States parties appearing before it, all testify to this determination. In the execution of its insistence upon efficiency, the Court has been dynamic and forward-looking.

However, two elements remain clear. The first is that these efforts and improvements — notwithstanding their inherent value — cannot alone achieve a tolerable professional environment in which to render judicial justice. The time has come for the General Assembly to provide the necessary increase in resources to match the internal efforts already made by the Court itself, so that a major organ of the United Nations can carry out the single task allocated to it under the Charter — the settlement of disputes between States and the provision of advisory opinions in accordance with international law. The truth is that in failing to provide the necessary resources, notwithstanding all the efforts made by the Court itself, the General Assembly is diminishing the importance it attaches to the peaceful resolution of international disputes through law.

Secondly, the Court notes that although the General Assembly is operating under great financial constraints, it has nonetheless found the means to support other judicial bodies. In this context, the Court observes that it has an annual budget of approximately $11 million while the 1997 budget of the International Criminal Tribunal for the former Yugoslavia stands at $70 million.

The Court is aware that that Tribunal has certain needs which it itself does not have (for example, for investigators in the field, or witness protection programmes). But the Court does need that which is essential for every judicial body to function. And even as regards this common element the Court and the Tribunal do not receive comparable treatment.

Thus the General Assembly has recently adopted budgetary provisions for the International Criminal Tribunal for the former Yugoslavia granting it further permanent posts. Among these were 22 legal personnel, to provide clerks for each judge (with the rest serving in the Registry). The judges of the International Court have no such legal clerks at all.

There is a minimum that the Court requires in order to make its full contribution to conflict prevention and dispute settlement, one of the major tasks of our times. There are certain unavoidable needs. Because the translation services are so understaffed, three extra posts are severely needed. In the tiny Press and Information Department, a clerical and administrative officer is a necessity together with proper press facilities. For computerization, the Court seeks appropriate scanning equipment, together with the transformation of a fixed-term post to a permanent post as well as one new additional post. The Court is studying both how to clear the backlog in publications and how in the future its publications can be carried out in the most efficient way. Its budget application will reflect its conclusions, both with regards to personnel and to available contemporary technology. And, for all the reasons described above, the Court regards it as essential to expand the staff of the Archives Department, to engage two messenger/drivers and, at the very minimum to upgrade a post within the Department of Legal Affairs. In addition, the Court will seek a pool of clerks to assist the Members of the Court, a pool of interns for the Registry, a secretary for each judge and a professional assistant for the President. These will be among the budgetary proposals to be advanced for the next biennium, elements of which may even be made in an earlier request should the situation so require.

In the meantime, the Court will continue its judicial work with dedication and vigour.

Annex II

NOTE RELATING TO THE RE-EXAMINATION BY THE INTERNATIONAL COURT OF JUSTICE OF ITS WORKING METHODS

1. The International Court of Justice recently carried out a re-examination of its working methods and took various decisions in this respect, bearing in mind both the congested state of the List and the budgetary constraints it has to face.

2. Some of these decisions concern the working methods of the Court itself. In outline, these measures, directed towards accelerating the Court's work, were brought to the attention of the United Nations General Assembly by the President of the Court at the Assembly's Fifty-second Session on 27 October 1997 (A/52/PV.36, pp. 1-5). The Court took a further series of decisions, also directed towards accelerating its work, in regard to various administrative matters.

3. The Court would further be grateful to parties for their assistance, and wishes in this connection to offer them the following guidance:

A. It should be noted that, in cases brought by Special Agreement, written pleadings are ordinarily filed simultaneously and not consecutively, in accordance with Article 46 of the Rules of Court. In such proceedings, the parties have occasionally tended to wait until they have known the other party's arguments before fully revealing their own. This has possibly resulted in a proliferation of pleadings and delay in the compilation of case files. The Court would therefore point out that the simultaneous filing by parties of their written pleadings is not an absolute rule in such circumstances. The Court, for its part, would see nothing but advantages if, in these cases, the parties agreed, in accordance with Article 46, paragraph 2, of the Rules of Court, to file their pleadings alternately.

B. Each of the parties should, in drawing up its written pleadings, bear in mind the fact that these pleadings are intended not only to reply to the submissions and arguments of the other party, but also, and above all, to present clearly the submissions and arguments of the party which is filing the pleadings. In the light of this, any summary of the reasoning of the parties at the conclusion of the written proceedings would be welcome.

C. The Court has noticed an excessive tendency towards the proliferation and protraction of annexes to written pleadings. It strongly urges parties to append to their pleadings only strictly selected documents. In order to ease their task at this stage of the proceedings, the Court will, acting by virtue of Article 56 of the Rules of Court, more readily accept the production of additional documents during the period beginning with the close of the written proceedings and ending one month before the opening of the oral proceedings.

D. Where one or other of the parties has a full or a partial translation of its own pleadings or of those of the other party in the second working language of the Court, the Registry would be glad to receive those translations. The same applies to the annexes. Once the Registry has examined the documents so received, it will communicate them to the other party and inform it of the manner in which they were prepared.

E. The Court draws the attention of parties to the fact that, according to Article 60, paragraph 1, of the Rules of Court:

"1. The oral statements made on behalf of each party shall be as succinct as possible within the limits of what is requisite for the adequate presentation of that party's contentions at the hearing. Accordingly, they shall be directed to the issues that still divide the parties, and shall not go over the whole ground covered by the pleadings, or merely repeat the facts and arguments these contain."

These provisions must of course be complied with, especially when objections of lack of jurisdiction or of inadmissibility are being considered. In those latter events, pleadings must inter alia be limited to a statement of the objections and exhibit the requisite degree of brevity.

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